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**IN MEMORY OF**

**JUDGE DOUGLASS BOARDMAN**

FIRST DEAN OF THE SCHOOL

**By his Wife and Daughter**

**A. M. BOARDMAN and ELLEN D. WILLIAMS**



*C. C. Moore*

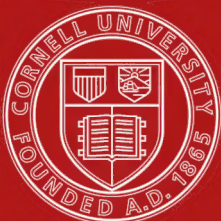
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# Slave-Trade and Slavery.

5 Geo. 4, c. 113; 5 & 6 Vict. c. 101; 3 & 4 Will. 4, c. 73; 5 & 6 Vict. cc. 91, 114; 6 & 7 Vict. c. 98.

THE general statutes relating to the abolition and suppression of slavery are, the 5 Geo. 4, c. 113, extended by 5 & 6 Vict. c. 101 to the governors and officers of the East India Company; the 3 & 4 Will. 4, c. 73, amended by 5 & 6 Vict. c. 91; but so far as relates to Portuguese vessels, afterwards repealed by 5 & 6 Vict. c. 114 (see, however, the 6 & 7 Vict. c. 53, for the new treaty with Portugal); and the 6 & 7 Vict. c. 98, which extends the provisions of 5 Geo. 4, c. 113, to "the several acts, matters, and things therein mentioned, when committed by British subjects in foreign countries and settlements not belonging to the British crown;" and enacts likewise further provisions "for the more effectual suppression of the slave trade and of certain practices tending to promote and encourage it."

Statutes relating to suppression of, in general.

By 5 & 6 Vict. c. 42, her Majesty is empowered, for more effectually carrying into effect treaties and conventions with foreign states for suppressing the slave trade, to appoint commissioner judges and commissioners of arbitration, whose powers and duties are defined by this statute.

The queen may conclude treaties with any foreign power immediately.

By 7 & 8 Vict. c. 26, her Majesty is also empowered at all times thereafter to direct by orders in council that all treaties or conventions and stipulations therein concluded with foreign powers for the suppression of the slave trade shall be carried into immediate execution.

The following list of acts have been passed to carry treaties into effect made with the states named for the suppression of the slave trade:—

- 3 & 4 Will. 4, c. 72....with France.
- 5 & 6 Will. 4, c. 60....France and Sardinia.
- c. 61....France and Denmark.
- 6 Will. 4, c. 6....Spain.
- 1 & 2 Vict. c. 39....Hans Towns.
- c. 40....Sweden.
- c. 41....Netherlands.
- c. 83....Tuscany.
- c. 84....Two Sicilies.
- 3 & 4 Vict. c. 67....Venezuela.
- 5 & 6 Vict. c. 40....Argentine Confederation.
- c. 41....Hayti.
- 6 & 7 Vict. c. 14....Bolivia.
- c. 15....Texas.
- c. 16....Uruguay.
- c. 50....Austria, Prussia, Russia.
- c. 51....Mexico.
- c. 52....Chili.
- c. 53....Portugal.
- 11 & 12 Vict. c. 116....Equator, Republic of.
- c. 128....Muscat, Imaum of.
- 12 & 13 Vict. c. 84....Arabian Chiefs of the Persian Gulf.
- 16 & 17 Vict. c. 16....Sohar, Chief of, in Arabia.
- c. 17....New Granada, Republic of.
- 18 & 19 Vict. c. 85....Sherbio County, Chiefs of, near Sierra Leone.

By 5 Geo. 4, c. 113, s. 9, dealing in slaves on the high seas, &c., Piracy shall be deemed piracy. (See "*Piracy*.")

Sect. 10. That (except in such special cases as are in and by this act Persons dealing.

5 Geo. 4, c. 113.

in slaves, or exporting or importing slaves :

or shipping slaves in order to exportation or importation ;

or fitting out slave ships :

or embarking capital in the slave-trade ;

or guaranteeing slave adventures ;

\* *Sic.*

or shipping goods, &c., to be employed in the slave trade ;

or serving on board slave-ships as captain, master, &c., surgeon, &c. ;

or insuring slave-adventures ;

or forging instru-

permitted, or otherwise provided for (a)) if any person shall deal or trade in, purchase, sell, barter, or transfer, or contract for the dealing or trading in, purchase, sale, barter, or transfer of slaves, or persons intended to be dealt with as slaves, or shall, otherwise than as aforesaid, carry away or remove, or contract for the carrying away or removing of slaves or other persons, as or in order to their being dealt with as slaves ; or shall import or bring, or contract for the importing or bringing, into any place whatsoever, slaves or other persons, as or in order to their being dealt with as slaves ; or shall, otherwise than as aforesaid, ship, tranship, embark, receive, detain, or confine on board, or contract for the shipping, transshipping, embarking, receiving, detaining, or confining on board of any ship, vessel, or boat, slaves, or other persons, for the purpose of their being carried away or removed, as or in order to their being dealt with as slaves ; or shall ship, tranship, embark, receive, detain, or confine on board, or contract for the shipping, transshipping embarking, receiving, detaining, or confining on board of any ship, vessel, or boat, slaves, or other persons, for the purpose of their being imported or brought into any place whatsoever, as or in order to their being dealt with as slaves ; or shall fit out, man, navigate, equip, despatch, use, employ, let, or take to freight or on hire, or contract for the fitting out, manning, navigating, equipping, despatching, using, employing, letting, or taking to freight or on hire, any ship, vessel or boat, in order to accomplish any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful ; or shall knowingly and wilfully lend or advance, or become security for the loan or advance, or contract for the lending or advancing, or becoming security for the loan or advance of money, goods, or effects, employed, or to be employed, in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful, or shall knowingly and wilfully become guarantee or security, or contract for the becoming guarantee or security for agents employed, or to be employed, in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful, or in any other manner to engage, or to\* contract to engage, directly or indirectly therein, as a partner, agent, or otherwise ; or shall knowingly and wilfully ship, tranship, lade, receive, or put on board, or contract for the shipping, transshipping, lading, receiving, or putting on board of any ship, vessel, or boat, money, goods, or effects, to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful ; or shall take the charge or command, or navigate, or enter and embark on board, or contract for the taking charge or command, or for the navigating or entering and embarking on board of any ship, vessel, or boat, as captain, master, mate, surgeon, or supercargo, knowing that such ship, vessel, or boat is actually employed, or is in the same voyage, or upon the same occasion, in respect of which they shall so take the charge or command, or navigate, or enter and embark, or contract so to do, as aforesaid, intended to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful ; or shall knowingly and wilfully insure, or contract for the insuring of any slaves, or any property or other subject matter engaged or employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful ; or shall wilfully and fraudulently forge or counterfeit any certificate,

(a) See the 6 & 7 Vict. c. 98. The special cases here excepted were repealed by 3 & 4 Will. 4, c. 73, s. 12.

certificate of valuation, sentence, or decree of condemnation or restitution, copy of sentence or decree of condemnation or restitution, or any receipt (such receipts being required by this act), or any part of such certificate, certificate of valuation, sentence, or degree of condemnation or restitution, copy of sentence or decree of condemnation or restitution, or receipt as aforesaid; or shall knowingly and wilfully utter or publish the same knowing it to be forged or counterfeited, with intent to defraud his Majesty, his heirs, or successors, or any other person or persons whatsoever, or any body politic or corporate; then and in every such case the person or persons so offending, and their procurers, counsellors, aiders, and abettors shall be, and are hereby declared to be felons, and shall be transported beyond seas for a term of fourteen years, or be sentenced to penal servitude for not less than five years, (16 & 17 Vict. c. 99; 27 & 28 Vict. c. 47,) or shall be confined and kept to hard labour for a term not exceeding five years, nor less than three years, at the discretion of the court before whom such offender or offenders shall be tried and convicted. (Punishment abated by discretion of court under 9 & 10 Vict. c. 24.)

5 Geo. 4. c. 113.  
ments relating to  
the slave laws,

declared guilty of  
felony, &c.

Sect. 11. And be it further enacted, That (except in such special cases or for such special purposes as are in and by this act expressly permitted) if any persons shall enter and embark on board, or contract for the entering and embarking on board of any ship, vessel or boat, as petty officer, seaman, marine, or servant, or in any other capacity not hereinbefore specifically mentioned, knowing that such ship, vessel, or boat is actually employed, or is in the same voyage, or upon the same occasion, in respect of which they shall so enter and embark on board, or contract so to do as aforesaid, intended to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful; then and in every such case the persons so offending, and their procurers, counsellors, aiders and abettors, shall be, and they are hereby declared to be guilty of a misdemeanor only, and shall be punished by imprisonment for a term not exceeding two years.

Seamen serving on  
board such ships  
guilty of mis-  
demeanor.

Sect. 50. All offences committed against this act may be inquired of, tried, determined and dealt with, as if the same had been respectively committed within the body of the county of Middlesex.

Process and trial.

The 29th section of this act, directing that no appeals shall be prosecuted from any sentence of any court of admiralty or vice-admiralty west of the Cape of Good Hope, touching any matters provided for in this act, unless the inhibition shall be applied for and decreed within twelve months from the time of the sentence being pronounced, applies as well to foreigners as British subjects. And, although parliament cannot legislate for foreigners out of the dominions, yet it can fix a time within which application must be made for redress to the tribunals of the empire; which, being matter of procedure, becomes the law of the forum, and by which all mankind are bound. (*Lopez v. Burslem, The Guiana, 7 Jur. 1119.*)

A merchant of London was indicted for an offence against the above act. His counsel applied to the court to allow the prisoner to sit by him, not on the ground of his position in society, but because he was a foreigner, and several of the documents in the case were in a foreign language, and it would, therefore, be convenient for his counsel to have him by his side, that he might consult him during the trial:—It was held, that the application was one which ought not to be granted.

The provisions of the act are not confined to acts done by British subjects in furtherance of the slave trade in England or the British colonies, but apply to acts done by British subjects in furtherance of that trade in places not part of the British dominions.

In order to convict a party who is charged with having employed and loaded a vessel for the purpose of slave-trading, it is not neces-

5 Geo. 4, c. 113.

sary to show that the vessel which carried out the goods was intended to be used for bringing back slaves in return: but it will be sufficient if there was a slave adventure, and the vessel was in any way engaged in the advancement of that adventure. Where a party living in London was charged with having chartered a vessel and loaded goods on board for the purposes of slave-trading, it was held that slave-trading papers found on board the vessel when she was seized in foreign parts, but not traced in any way to the knowledge of such party, were not admissible in evidence against him. (*Reg. v. Pedro de Zulueta the Younger*, 1 Carr & Kirwan, 215.)

Bounties on seizure of.

By the 1 Will. 4, c. 55, the rate of bounties payable upon the seizure of slaves is reduced; and see further as to bounties, the 1 & 2 Vict. c. 47, as likewise the several acts relating to the special treaties with foreign states.

A wrongful dispossession of original seizors confers no title to the second seizors in the bounties awarded by act of parliament on the tonnage of a condemned slave ship. (*The Eagle*, 1 Rob. 236.)

The principles established in cases of joint capture in time of war are to be applied to claims of joint capture in the suppression of the slave trade; although, possibly those principles cannot be applied in the latter instance with the same rigid strictness as in the former, e.g. where in the latter case, the only evidence on the part of the claimant to share consists in the testimony of releasing witnesses. (*The Sociedade Feliz*, 1 Rob. 303.)

## Sodomy.

What it is.

**SODOMY** or Buggery (from the Italian *bugarone*, a buggerer, this vice being said to have been brought into England out of Italy by the Lombards) is a detestable and abominable sin, amongst Christians not to be named, committed by carnal knowledge against the ordinance of the Creator and order of nature by mankind with mankind, or with brute beast, or by womankind with brute beast. (3 Inst. 58.)

Where the defendant was indicted for having committed this offence with a woman, a majority of the judges held that this was within the statute, but two or three of them held that it was not; no opinion was publicly given. (*R. v. Wiseman*, Fortesque, 91; see *R. v. Jellyman*, 8 C. & P. 604.)

Punishment.

By 24 & 25 Vict. c. 100, s. 61, Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable at the discretion of the court to be kept in penal servitude for life, or for any term not less than ten years.

Attempts to commit offence.

Sect. 62. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

If it be committed on a boy under fourteen years of age, it is felony in the agent only. (1 Hale, 670; 3 Inst. 59.) The patient may be convicted of sodomy, although the agent is under fourteen years of age. (*R. v. Allen*, 18 L. J. 72, M. C.)

The evidence in a prosecution for sodomy is the same as in rape, for which see *ante*, "Rape," with two exceptions; 1st. That it is not necessary to prove the offence to have been committed against the consent of the person upon whom it was perpetrated; and 2ndly. Both agent and patient (if consenting) are equally guilty. (3 Inst. 59; 1 Hale, 670.)



Where the prisoner forced open a child's mouth, and put in his private parts, and proceeded to the completion of his lust, the judges were of opinion that this did not constitute the offence of sodomy. (*R. v. Jacobs, R. & R. 331.*)

As in the case of rape, penetration alone is sufficient to constitute the offence, it may be proper to suggest to magistrates, before whom persons are brought on charges of this kind, that they should not bind over the parties accused to answer the capital part of this charge, unless it appears that the crime was complete. In proportion as the crime is most detestable, so ought the proof of guilt to be the clearest and most undoubted. (1 *East's P. C.* 480; 4 *Bla. Com.* 215.)

An admission by the prisoner that he had committed such an offence at another time and with another person, and that he had a tendency towards such practices, ought not to be received in evidence in an indictment for this offence. (*R. v. Cole*, by the twelve judges, *Phill. on Evid.* 7 ed. 181.)

The indictment has the words *contra naturæ ordinem rem habuit veneream, et carnaliter cognovit*; but Mr. J. Foster says, this was never thought sufficient without also charging *peccatumq. illud sodomiticum, anglicè dictum buggery, adtunc et ibidem nequiter felonice, &c. commisit, et perpetravit*; and he refers to *Co. Ent.* 351 b, as a precedent settled by great advice. (1 *East's P. C.* 680.)

An indictment charged that two defendants, in a certain open and public place called, &c., frequented by divers of the liege subjects, &c., unlawfully met together for the purpose and with the intent of committing with each other, openly, lewdly, and indecently, in the said public place, divers nasty, wicked, filthy, lewd, beastly, unnatural, and sodomitical practices, and then and there unlawfully, wickedly, openly, lewdly, and indecently did commit with each other, in the sight of divers of the liege subjects, &c., in the said public place there passing, &c., divers such practices as aforesaid, is bad, as not specifying any offence with legal certainty. (*Reg. v. Rowed*, 3 *Ad. & E. N. S.*, 180; 2 *Gale & D.* 518.)

By 14 & 15 Vict. c. 100, s. 9, under indictment for the full offence, the prisoner may be convicted of the attempt only.

This offence is not triable at any quarter sessions, 5 & 6 Vict. c. 38, s. 1. Not triable at sessions.

As to the offence of an assault to commit sodomy, see *Assault*.

Assaults to commit.

[Commencement as usual,] on the \_\_\_\_\_ day of \_\_\_\_\_, at the (1.) Commitment  
parish of \_\_\_\_\_, in the said county of \_\_\_\_\_, feloniously did assault one A. B., for sodomy.  
and then and there feloniously, wickedly and diabolically, and against the  
order of nature, had a venereal affair with the said A. B.; and then and there  
knew the said A. B.; and then and there feloniously, wickedly, diabolically,  
and against the order of nature, with the said A. B. did commit and perpetrate  
that detestable and abominable crime of buggery; against the form of the  
statute in that case made and provided. And you the said keeper, &c. [as usual  
to the end].

[Commencement as usual,] on the \_\_\_\_\_ day of \_\_\_\_\_, at the (2.) Commitment  
parish of \_\_\_\_\_, in the said county, with a certain cow, feloniously, wickedly, for bestiality.  
diabolically, and against the order of nature, had a venereal affair, and then  
and there feloniously, wickedly, diabolically, and against the order of nature,  
carnally knew the said cow; and then and there feloniously, wickedly, diabo-  
lically, and against the order of nature, with the said cow, did commit and  
perpetrate that detestable and abominable crime of buggery; against the form  
of the statute in that case made and provided. And you the said keeper, &c.  
[as usual to the end].

(3.) Indictment for sodomy.

— to wit. *THE jurors for our lady the Queen upon their oath present, that C. D., late of the parish of , in the county of , on the day of , in the year of the reign of our lady the now Queen Victoria, at the parish aforesaid, in the county aforesaid, in and upon one A. B. then being, feloniously did make an assault, and then feloniously, wickedly, diabolically, and against the order of nature, had a venereal affair with the said A. B., and then carnally knew him the said A. B., and then feloniously, wickedly, diabolically, and against the order of nature, with the said A. B. did commit and perpetrate that detestable and abominable crime of buggery, (not to be named amongst Christians): against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity.*

(4.) Indictment for bestiality.

— to wit. *THE jurors for our lady the Queen, upon their oath present, that C. D., late of the parish of , in the county of , on the day of , in the year of the reign of our lady the now Queen Victoria, at the parish aforesaid, in the county aforesaid, with a certain cow then being, feloniously, wickedly, diabolically, and against the order of nature, had a venereal affair, and then feloniously, wickedly, and diabolically, and against the order of nature, carnally knew the said cow; and then feloniously, wickedly, diabolically, and against the order of nature, with the said cow did commit and perpetrate that detestable and abominable crime of buggery, (not to be named among Christians): against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.*

(5.) Indictment for assault to commit.

[As before.] *In and upon one A. B., in the peace of God and our lady the Queen then being, did make an assault and him the said A. B. did then beat, wound, and ill-treat, with intent that detestable and abominable crime (not to be named among Christians) called buggery with the said A. B., feloniously, wickedly, diabolically, and against the order of nature, to commit and perpetrate, to the great displeasure of Almighty God, to the great damage of the said A. B., against the form of the statute in such case made and provided, and against the peace, &c.*

## Stage Carriages and Post Horses.

AS to carriers and their liabilities, &c., see "*Carriers.*"

As to the tolls of stage coaches, see "*Highways, Turnpike.*"

As to the liability of an innkeeper to furnish post horses, see "*Alley-house.*"

As to stating the proprietorship of partners in stage coaches, see "*Indictment.*"

As to hackney coaches, see "*Hackney Coaches.*"

Stat. 5 & 6 Vict. c. 80 repeals the duties of assessed taxes on stage coachmen and guards, and on certain carriages kept to be let for hire; and grants new duties in lieu of them, see "*Taxes.*"

I. *Regulations as to Stage Carriages, Licences, and Duties*, 2 & 3 Will. 4, c. 120; 3 & 4 Will. 4, c. 48; 6 & 7 Will. 4, c. 65; 2 & 3 Vict. c. 66; 5 & 6 Vict. c. 79; 10 & 11 Vict. c. 42; 18 & 19 Vict. c. 78; 26 & 27 Vict. c. 33.

II. *Regulations as to Duties on Horses Let to Hire*, 6 & 7 Will. 4, c. 75; 16 & 17 Vict. c. 88; 24 & 25 Vict. c. 91; 29 Vict. c. 36.

III. *Proceedings to Recover Penalties*, 2 & 3 Will. 4, c. 120; 16 & 17 Vict. c. 88.

## I. Regulations as to Stage Carriages, Licences, and Duties.

1. *Regulations as to Stage Carriages, Licences, and Duties.*

2 & 3 Will. 4, c. 120.

Stat. 2 & 3 Will. 4, c. 120, intituled "An Act to repeal the Duties under the Management of the Commissioners of Stamps on Stage Carriages and on Horses let for Hire in Great Britain, and to grant other Duties in lieu thereof; and also to consolidate and amend the Laws relating thereto," reciting, "that it is expedient to repeal the duties under the management of the commissioners of stamps in respect of stage carriages and of horses let for hire in Great Britain, and to grant other duties in lieu thereof, and also to consolidate and amend the laws now in force relating to such stage carriages and horses as aforesaid respectively," enacts, "that the several acts and parts of acts next hereinafter mentioned, or so much and such part and parts thereof as are now in force, shall respectively after the 10th day of October, 1832, be repealed; (that is to say,) the 25 Geo. 3, c. 51, so much of 44 Geo. 3, c. 98, as relates to the painting upon every carriage to be employed as a public stage coach or carriage for the purpose of conveying passengers for hire to and from different places in Great Britain certain words in the last-recited act mentioned, and to the number of inside passengers to be carried in any such carriage; the 50 Geo. 3, c. 48, so much of 53 Geo. 3, c. 108, ss. 21 and 22 as relates to the duties granted on coaches and other carriages employed as public stage coaches, or carriages for conveying passengers for hire, and on licences for keeping the same; and also so much of the said last-recited act as relates to the time of granting such licences, or of their continuing in force; and so much of 55 Geo. 3, c. 185, ss. 2, 3, 6, 11 and 12, as relates to the duties on stage coaches, and on licences for keeping stage coaches, and as relates to the offences in the said act mentioned respecting such duties and licences; and also so much of the said last-recited act as relates to licences to be taken out by the owners of hackney coaches employed as stage coaches, and to the owners or drivers of stage coaches taking up passengers in manner by the said last-recited act allowed; and the whole of 3 Geo. 4, c. 95; and the 7 Geo. 4, c. 33; and so much of 9 Geo. 4, c. 49, ss. 16, 17, and 18, as relates to stage coaches or other carriages kept, used, or employed to convey passengers for hire, or to the recovery of any fine, penalty, or forfeiture made or incurred with relation to any such stage coaches or carriages; and so much of 2 Geo. 3, c. 15, s. 9, as relates to the penalty therein imposed upon the driver of any fish carriage for taking up or suffering any passenger to be carried or conveyed in or by any such fish carriage; and the said several acts and parts of acts hereinbefore specified shall be and the same are hereby severally repealed accordingly, save and except only so far as is hereinafter in that behalf provided."

Repeal of acts.

Sect. 2 repeals the 4 Geo. 4, c. 62, relating to the duties on horses let for hire, after the 31st of January, 1833.

Sect. 4 grants duties in schedule (A.) thereto annexed, but now repealed, and new duties substituted by 5 & 6 Vict. c. 79.

Sect. 5. Every carriage used or employed for the purpose of conveying passengers for hire to or from any place in Great Britain, and which, when passing along any highway or other road, shall travel at the rate of three [same extended by 6 & 7 Will. 4, c. 65, s. 7, *infra*, to four miles] miles or more in the hour, shall, without regard to the form or construction thereof, be deemed and taken to be a stage carriage within the meaning of this act; provided the passengers, or any one or more of them, thereby conveyed, shall be charged or shall pay separate and distinct fares, or a separate and distinct fare, or shall be charged or pay at the rate of separate and distinct fares, for their respective places or seats or his place or seat therein or conveyance

Definition of a stage carriage.

1. *Regulations as to Stage Carriages, Licences, and Duties.*

2 & 3 Will. 4, c. 120.

6 & 7 Will. 4, c. 65.

Carriages for carrying passengers travelling at a rate less than four miles an hour not to be deemed stage carriages.

2 & 3 Will. 4, c. 120.

Stage carriages not to be used without licences, nor without plates, nor without having painted thereon the particulars hereby required.

Carriages with plates or particulars painted thereon to be deemed stage carriages.

Persons applying for stage carriage licences to sign a requisition for same.

thereby; and in all proceedings at law or otherwise, and upon all occasions whatsoever, it shall be sufficient to describe any carriage used or employed as aforesaid by the term "stage carriage," without further or otherwise describing the same: Provided always, that the said term "stage carriage" shall not be deemed to extend to or include any carriage used or employed as aforesaid wholly upon any railway, nor to any carriage drawn or impelled by the power of steam, or otherwise than by animal power.

By 6 & 7 Will. 4, c. 65, s. 7, reciting that, by 2 & 3 Will. 4, c. 120, it is enacted, "That every carriage used or employed as therein mentioned, and which when passing along any highway or other road shall travel at the rate of three miles or more in the hour, shall be deemed and taken to be a stage carriage within the meaning of the said act, provided as therein also mentioned: and that it is expedient to permit certain carriages to travel at a rate exceeding three miles in the hour without being deemed to be stage carriages;" it is enacted, "that from and after the passing of this act, no carriage shall by reason of the rate of travelling be deemed or taken to be a stage carriage within the meaning of the said act unless the same shall travel at the rate of four miles or more in the hour."

By 2 & 3 Will. 4, c. 120, s. 6, "It shall not be lawful for any person to keep, use, or employ any stage carriage, unless such person shall have a licence in force so to do, granted to him under the authority of this act by two or more of the commissioners of stamps, or by some person duly authorised by the said commissioners to grant such licence, nor unless there shall be fixed on such carriage, in the manner herein-after mentioned, the numbered plates by this act directed to be delivered with every such licence, nor unless the several particulars by this act directed to be painted on every such carriage shall be painted thereon; any thing in any other act contained to the contrary thereof notwithstanding."

Sect. 7. In any action, information, or other proceeding for the recovery of any duty or penalty incurred under this act in respect of or with relation to any stage carriage, if evidence shall be given that the carriage in respect of which or in any manner relating to which any such action, information, or proceeding shall be commenced or prosecuted was seen travelling or going upon any highway or other road, having fixed or placed thereon any numbered plate provided or used in pursuance of this or any former act relating to stage carriages, or having thereupon any plate resembling or intended to resemble any such plate as aforesaid, or having painted upon such carriage any of the particulars required by this act to be painted upon stage carriages, such carriage shall be deemed and taken to be a stage carriage; and such evidence as aforesaid shall be received as sufficient proof that such carriage was kept, used, and employed for the purpose of conveying passengers for hire as a stage carriage within the meaning of this act, unless the contrary be proved; and that in all such actions, informations, and proceedings as aforesaid the person named or described in the licence granted with or relating to the number of the plate (if any there shall be) fixed or placed upon any such carriage, whether such licence shall be in force or not, or the person whose name (if any) shall be painted on any such carriage, shall for the purposes of this act (unless the contrary be proved) be deemed to be the person to whom such carriage doth belong.

Sect. 8 regulates by whom, to whom, and where stage carriage licences shall be granted.

Sect. 9. Before any licence, whether original or supplemental, shall be granted or renewed under the provisions of this act for or in respect of any stage carriage, a requisition for such licence, in such form as the commissioners of stamps shall from time to time provide for that purpose, shall be made and signed by the proprietor or one of the pro-



prietors of the stage carriage in respect of which such licence shall be applied for; and in every such requisition there shall be truly specified as to Stage Carriages, Licences, and Duties. the person applying for such licence, and of every person who shall be a proprietor or part proprietor of such carriage, or who shall be concerned, either solely or in partnership with any other person, in the keeping, using, or employing of such carriage; and in case any person, on applying for any such licence, shall neglect or omit to specify truly in such requisition as aforesaid the name of any person who shall be a proprietor or part proprietor of such carriage, or who shall be concerned as aforesaid in the keeping, using, or employing of such carriage, every person so offending shall forfeit 10*l*.

2 & 3 Will. 4, c. 120.

Penalty for omitting name of any proprietor.

Sect. 10. If any person applying for or procuring or attempting to procure any licence under this act for or in respect of any stage carriage shall use or employ any false or fictitious name or place of abode, or other false or fictitious description of any person or supposed person, or shall insert or cause to be inserted in any requisition for any such licence, or in any such licence, any false or fictitious name or place of abode, or other false or fictitious description of any person or supposed person as being the proprietor or part proprietor of the stage carriage for or in respect of which such licence shall be applied for or procured, or shall wilfully or knowingly insert or cause to be inserted in any such requisition, or in any such licence as aforesaid, the name of any person as being a proprietor or part proprietor of such carriage who shall not at the time of the application for such licence be in fact a proprietor or part proprietor of such carriage, the person so offending shall be guilty of a misdemeanor, and, being convicted thereof, he shall be liable to be punished by fine or imprisonment, or by both, as the court shall award; such imprisonment to be in the common gaol or house of correction, and either with or without hard labour, as the court shall think fit; and in Scotland, whenever any person shall so offend, he shall be liable to be punished in like manner.

Persons inserting a false name, &c., in a requisition or licence, guilty of a misdemeanor.

Sect. 11. There shall be specified in every licence to be granted or renewed under this act for or in respect of any stage carriage the following particulars, or such of them as the commissioners of stamps shall think proper; (that is to say,) the christian name and surname and the place of abode of the person and of every person who shall be a proprietor or part proprietor of the stage carriage in respect of which such licence shall be granted, or who shall be concerned, either solely or in partnership with any other person in the keeping, using, or employing of such carriage, the number painted or marked on the plates to be fixed on such carriage, the names of the extreme places from which and to which such carriage shall be authorised by such licence to go or pass, and the route or line of road by which such carriage shall travel to or from such extreme places, and also the distance in miles or fractional parts of a mile, or both, as the case may require, between such extreme places, the number of journeys, and the total number of miles upon which the duty granted by this act shall be assessed, and which such carriage shall be authorised to perform or to travel, either separately or in conjunction with one or more other licensed stage carriage or carriages, within the day, week, or month, as the said commissioners may think fit, the days of the week on which such carriage shall be authorised to be used, and the greatest number of passengers to be conveyed by such carriage, distinguishing (when the same is intended to convey both inside and outside passengers) the number to be carried on or about the outside from the number to be carried in the inside of such carriage; and a copy of every such licence, and of every indorsement which shall from time to time be made thereon, shall be kept at the office or place from which such licence shall be issued, in order that any person may have a copy thereof, paying 1*s*. for the same.

Particulars to be specified in stage carriage licences.

Copy of licence to be given on payment of 1*s*.

1. *Regulations as to Stage Carriages, Licences, and Duties.*

2 & 3 Will. 4, c. 120. Duties may be compounded for. In case of a composition, the amount to be specified in the licence.

Licences to be renewed yearly.

Supplementary stage carriage licences may be granted in certain cases.

Such supplementary licence to be then the only licence in force.

Sect. 12. Provided always, That it shall be lawful for the commissioners of stamps, where they shall deem it expedient, at the time of granting any such licence as aforesaid, to compound with any person, on such terms and conditions as they shall think fit, for the duties which may become payable in respect of such stage carriage; and then and in such cases, instead of the number of journeys and the total number of miles which such carriage shall be authorised to perform within the day, week, or month, there shall be specified in the licence granted for or in respect of such carriage the amount of the composition, per day, week, or month, to be paid for and in respect of such carriage in lieu of the duties specified in the said schedule to this act annexed, together with such stipulations and conditions as the said commissioners shall think proper for better securing the payment of such composition.

By sect. 13, the time of carriage licences' duration was regulated; now provided for by s. 10 of 26 & 27 Vict. c. 33, *post*; and every such licence shall be renewed from year to year, by the grant of an original licence, on payment of the duty, of 5*l.* by this act charged thereon. (See 5 & 6 Vict. c. 79, s. 8, *post*.)

Sect. 14 provides the mode of discontinuing stage carriage licences; and sect. 15, for the delivery of plates within seven days of the expiration of licences, or in default the duty to continue payable.

Sect. 16. Whenever any person to whom any original licence chargeable under this act with the duty of 5*l.* shall have been granted for or in respect of any stage carriage shall afterwards, and within the term for which such licence was granted, take any other person into partnership in the keeping, using, or employing of such stage carriage; and whenever, after the granting of any such original licence as aforesaid to any persons in copartnership, and within the period for which the same was granted, any alteration shall take place in such copartnership; and also whenever any person to whom any such original licence as aforesaid shall have been granted shall afterwards, and within the period for which the same was granted, be desirous of increasing or decreasing the number of journeys specified in such licence to be performed or travelled by such stage carriage in the day week, or month, as the same may be specified in such licence, or of altering the route or line of road by which such stage carriage shall travel to or from the extreme places from which and to which such stage carriage shall be authorised by such licence to go or pass, or of altering such extreme places by extending or shortening the distance which such stage carriage shall be authorised to perform or travel on the same line of road, or of altering the days of the week on which such stage carriage shall be authorised to be used, or of increasing or decreasing the number of passengers to be conveyed by such stage carriage, either in the whole or in the inside or on or about the outside thereof, then and in any of the several cases aforesaid, upon the surrender and delivery of any such original licence, or of any existing supplementary licence, which may have been taken out in lieu thereof, to the commissioners of stamps, or to the officer by whom the same was granted, the said commissioners or officer shall grant to such person or copartnership of persons a supplementary licence, with any such alterations or variations as aforesaid, in lieu of the licence so surrendered and delivered up, on payment only of the duty of 1*s.* by this act charged on such supplementary licence; and in like manner a supplementary licence shall be granted and taken out from time to time as often as any of the several cases aforesaid shall occur during the period for which any such original licence shall have been previously granted. (See, further, the 5 & 6 Vict. c. 79, s. 9, *post*.)

Sect. 17. Whenever any such supplementary licence as aforesaid shall be granted in lieu of any pre-existing licence such pre-existing licence shall thenceforth cease and determine, and such supplementary licence shall be deemed to be the only licence then in force; and it

shall not be necessary upon any occasion to prove that any original licence had been previously taken out for or in respect of the stage carriage for which such supplementary licence shall have been granted, nor shall the circumstances under which such supplementary licence was issued be required to be proved, nor the regularity of the issuing thereof in any manner questioned.

Sect. 18. The duty payable in respect of any licensed stage carriage shall be payable and paid to his Majesty by the person or persons named as the proprietor or proprietors in the licence relating to such stage carriage; and in all actions, informations, and other proceedings for the recovery of any such duty each and every of the said proprietors severally, or the whole, or any two or more of them jointly may be charged with and prosecuted for the same; and the amount of the rate of duty imposed by this act upon or in respect of any such carriage, computed upon the number of miles which such carriage shall be authorised by such licence to travel in the day, week, or month, as the case may be, or the amount of the composition specified in such licence, computed upon the time which shall have elapsed since the date thereof, shall be deemed to be the amount of duty due and payable in respect of such carriage (unless the same shall be proved to have been paid); and proof of the granting of any such licence, and of the terms thereof, shall in all cases be sufficient evidence of the duty due, without any evidence being given of the actual keeping, using, or employing of the stage carriage in such licence mentioned by the person named therein as the person to whom the same shall have been granted: Provided always, that nothing herein contained shall extend to exonerate from liability to the payment of such duty any proprietor whose name may not be inserted in such licence, but that every such proprietor may be charged with and prosecuted for such duty, either alone or jointly with any one or more other proprietor or proprietors, whether named in such licence or not.

Sect. 19 provides that the commissioners may make allowance for duties on journeys expressed in the licence but not performed by stage carriage, and imposes a penalty of 50*l.* for rendering a false account of journeys performed by stage carriage.

Sect. 20 provides for when and where duties are to be paid by the person to whom the licence shall be granted.

Sect. 21. If any person to whom any licence shall be granted under the provisions of this act, to keep, use, or employ any stage carriage shall make default in payment of any sum of money not exceeding in amount the sum of 50*l.*, which shall become due or payable in respect of such licence, at the time and in the manner by this act appointed for payment thereof, it shall be lawful for any two of the commissioners of stamps to grant a warrant to any constable or other peace officer, or to any officer of stamp duties, or other person named in such warrant, directing him to distrain every such person so making default as aforesaid by his goods and chattels, and also to seize and take the carriages, horses, harness, and other articles and things by this act made subject and liable to such duty, for the amount of the duty so due or payable as aforesaid, and of all the costs, charges, and expenses incident or relating to the taking and keeping of such distress; and it shall be lawful for such constable, or for any such officer or other person as aforesaid, to make such distress and seizure accordingly, and the distress so taken to detain and keep for the space of five days, at the costs and charges of the person distrained; and if the amount of such duty, and of all the costs, charges, and expenses aforesaid, shall not be paid within such space of five days, then such constable or officer or other person shall cause the goods and chattels, carriages, horses, harness, and other things so seized or taken to be sold in the manner directed by this act, and shall render the overplus, if any, of the money arising by the sale thereof, after deducting and re-

1. *Regulations as to Stage Carriages, Licences, and Duties.*

2 & 3 Will. 4, c. 120.

Duty to be payable by the person named in licence;

and to be computed according to terms of licence.

Evidence of duty due.

Stage carriage duties not exceeding 50*l.* recoverable by distress.

1. *Regulations as to Stage Carriages, Licences, and Duties.*

2 & 3 Will. 4, c. 120.

Duties to be paid in respect of unlicensed stage carriages, over and above the penalty.

Separate licence required for every pair of plates.

New plates to be delivered in lieu of defaced or lost plates.

taining the amount of such duty, and all the costs, charges, and expenses aforesaid, as well as the charges and expenses of the sale, to the person so distrained, or to the owner of the carriages, horses, harness, or other things so seized and taken as aforesaid; and for the purpose of taking such distress it shall be lawful for such constable or other peace officer, or for such officer of stamp duties, or other person named in such warrant, in the presence of any constable or other peace officer, where any refusal or resistance shall be made, to break open in the day-time any house, building or other place where any such carriages, horses, harness, or other articles or things, or any goods or chattels, to be seized or taken under such warrant as aforesaid, shall be.

Sect. 22. If any person shall keep, use, or employ any stage carriage without having such licence as by this act is required, such person shall, over and above any penalty which may be incurred under this act, be accountable to his Majesty for the same duty as such person would have been chargeable with and liable to pay for or in respect of such carriage in case such person had obtained a proper licence for the same under this act, for the particular journey, distance, or number of miles, and for the number of journeys in the day, week, or month, and for the number of passengers, which such person shall at any time have advertised or otherwise notified or expressed that such carriage was intended or had been or was to be employed to go or carry respectively, or which such carriage shall actually have gone or carried respectively, at any one period during which such carriage shall have been kept or used, at the election of the said commissioners; and that every person so keeping, using or employing such carriage, shall be chargeable with such duty for the same from the time when such carriage was first kept or used without such licence as aforesaid, down to the time when any licence shall be taken out for the same by such person, or to the time when the use thereof shall be absolutely discontinued, and also with the duty which would have been payable for the proper licence which such person ought to have taken out in respect of such carriage as aforesaid.

Sect. 23. It shall not be lawful for any person licensed in respect of any stage carriage to use, have, or keep more than one pair of plates under or by virtue of any one licence, but that for every pair of plates there shall be a separate and distinct licence.

Sect. 24. Whenever the number or device on any plate or plates shall become obliterated or defaced, so that the same shall not be distinctly visible and legible, and also whenever any plate or plates shall be proved to the satisfaction of the commissioners of stamps to have been lost or mislaid, the person to whom the licence relating to any such plate or plates shall have been granted shall surrender and deliver up such of the said plates as he shall have in his possession, and shall produce such licence to the said commissioners or to their proper officer, and such person shall then be entitled to have new plates delivered to him in lieu of the plates so delivered up, or lost, or mislaid, upon payment for the use of his Majesty, of any sum, in the discretion of the said commissioners, not exceeding the sum of 10s. for each pair of plates; and where the number on such new plates shall be different from the number on such plates so delivered up, or lost, or mislaid, the said commissioners or officer shall indorse and sign upon the licence a memorandum of the issuing of such new plates in lieu of the plates in such licence mentioned: Provided always, that if any such plate or plates which shall have been proved as aforesaid, or represented to have been lost or mislaid, shall afterwards be found, the same shall forthwith be delivered up to the said commissioners; and if any person in or into whose possession or power any such plate or plates as last aforesaid shall be or come shall refuse or neglect for the space of five days to deliver up the same to the said commissioners, he shall forfeit 20l.



Sect. 25 provides that whenever, in the opinion of the commissioners of stamps or their proper officer, it shall be expedient to recall any plates for the purpose of changing the same for any other plates, and such commissioners or officer shall give notice to the person or to any one of the persons to whom the licence relating to such plates shall have been granted to that effect, such persons are to deliver up the same within one week.

Sect. 26. The plates by this act required to be fixed upon every stage carriage shall be fixed, one on each side of such carriage, upon the upper fore quarter at the lower angle adjoining to the door, or if there be no upper fore quarter, then on the centre panel of each door in the side of such carriage, or if there be a door only in one side of such carriage, then one of such plates shall be fixed upon the centre panel of that door and the other upon some conspicuous part of the opposite side of such carriage, or if there be no door in either side of such carriage, then one of such plates shall be fixed upon some conspicuous part of each side of such carriage; and if it shall happen that the commissioners of stamps, or their proper officer, shall be dissatisfied with the position of any plate upon any such carriage, and shall direct such plate to be fixed upon some other conspicuous part of such carriage, such plate shall be fixed accordingly upon such carriage in compliance with such direction.

Sect. 27. If any person shall keep, use, or employ, or shall be concerned as proprietor or part proprietor in the keeping, using, or employing of any stage carriage, without having a licence in force so to do granted to him under this act, or if any person, whether he shall have any such licence or not, shall keep, use, or employ any stage carriage, such carriage not having placed and fixed thereupon and in the manner directed by this act the numbered plates required by this act to be fixed on stage carriages, or having thereupon any such plate as aforesaid the number or device whereon shall be in any manner obliterated, defaced, or obscured, so that the same shall not be distinctly visible and legible, or if any person to whom any such licence shall have been granted shall for the space of one week after notice in manner by this act directed to be given to such person that the plates to which such licence shall relate have been recalled, neglect or refuse to deliver up the plates mentioned in such notice, according to the terms thereof, every person so offending in any of the several cases aforesaid shall forfeit 20*l*.

Sect. 28. If any person to whom any licence shall have been granted in respect of any stage carriage shall permit or suffer such carriage to perform a greater number of journeys or to travel a greater number of miles than shall be mentioned in or allowed by such licence, or to be used on any other day or for the performing of any other journey than shall be mentioned or allowed in or by such licence, or shall fix or place upon such carriage any plate having a number different from the number mentioned in or authorised by the licence in force at the time of using such carriage, such person shall be deemed to be a person keeping, using, and employing a stage carriage without having a licence in force so to do, and shall accordingly be subject and liable to the penalty of 20*l*. by this act imposed in that behalf; and in all actions, informations, or other proceedings against such person for the recovery of such penalty in any of the cases aforesaid it shall be sufficient to charge or allege that such person did keep, use, and employ a stage carriage without having a licence in force so to do granted to him under this act, and it shall not be necessary further or otherwise to state or describe any such offence, nor to prove that such carriage was used or employed for the conveyance of passengers at separate fares.

Sect. 29. Whenever any person to whom any licence shall have been granted for or in respect of any stage carriage shall die, or become bankrupt or insolvent, during the existence of such licence, it shall be lawful for his executor, administrator, or assignee, or trustee, to keep,

1. *Regulations as to Stage Carriages, Licences, and Duties.*

2 & 3 Will. 4, c. 120.

How plates are to be placed upon stage carriages.

Penalty for keeping, using, &c., any stage carriage without a licence or without plates, or with recalled plates.

Persons using stage carriages contrary to their licences, or with improper plates, shall be deemed to be using them without licences.

How offence to be alleged and proved.

Representatives of persons licensed may use stage carriages for thirty days

1. *Regulations as to Stage Carriages, Licences, and Duties.*

2 & 3 Will. 4, c. 120.  
without further  
licence.

Plying for hire  
with carriages  
not having plates  
thereon.

Offenders may be  
apprehended and  
conveyed before a  
justice.

Carriages may be  
driven to green-  
yard or other  
place for safe  
custody.

use, and employ such stage carriage according to the terms of such licence for the space of thirty days next after the death, bankruptcy, or insolvency of the person to whom such licence was granted, without being liable for so doing to the penalty by this act imposed on any person who shall keep, use, or employ any stage carriage without having a licence in force so to do: Provided always, that such executor, administrator, assignee, or trustee shall be liable to and chargeable with the payment of the duty which shall accrue or become payable in respect of such stage carriage from the time of such death, bankruptcy, or insolvency, and shall also be liable to all other the provisions and regulations of this act in the same manner as if such executor, administrator, assignee, or trustee had duly obtained the licence in his own name for the keeping, using, and employing of such stage carriage. (See 5 & 6 Vict. c. 79, s. 9, *post*.)

Sect. 30. If any carriage, whether licensed as a stage carriage or not, shall be found upon or near to any public highway, and any person shall ply for passengers to be conveyed by such carriage for hire at separate fares, such carriage not having placed and fixed thereupon the numbered plates required by this act to be fixed on stage carriages, the driver [*R. v. Barker*, 3 *East*, 504,] of such carriage, or the person having the care thereof, or plying for passengers to be conveyed thereby, such driver or person, not being the owner of such carriage, shall forfeit 10*l.*, and if he shall be the owner of such carriage he shall forfeit 20*l.*; and moreover it shall be lawful for any constable or other peace officer, or any officer of stamp duties, without any warrant for that purpose, to apprehend such driver or other person having the care of such carriage or plying for passengers to be conveyed thereby, and to carry and convey him before any justice of the peace having jurisdiction where the offence shall be committed, to be dealt with as hereinafter mentioned; and it shall also be lawful for such constable or other peace officer, or officer of stamp duties, to drive or take the carriage not having such plates, with the horse or horses harnessed thereto or drawing the same, or to cause the same to be driven or taken, to some public greenyard, or some livery stables or other place of safety, and there to lodge the same for safe custody until the determination of such justice shall be known; and the justice before whom such driver or other person shall be brought shall hear and determine such offence; and in case the person convicted of any such offence shall be the owner of any such carriage, and if the said penalty of 20*l.*, together with all costs and expenses, and the expenses of taking such carriage and horse or horses to and keeping the same at such greenyard, stables, or other place, shall not be fully paid or discharged within five days after such conviction, such carriage and horse or horses, together with the harness used therewith, shall be sold by order under the hand of such justice, and the surplus (if any) of the produce of such sale, after deducting therefrom the said penalty, costs, and expenses, and also the expenses of such sale, shall be rendered to such owner; but in case the person so convicted shall not be the owner of such carriage, then on default being made in payment of the said penalty of 10*l.* such justice shall commit the offender to the common gaol or house of correction for the space of three calendar months, unless such last-mentioned penalty shall be sooner paid; and such justice shall give an order for the delivering up of the carriage, and horse or horses, and harness to the owner thereof, on his paying the expenses of taking and keeping the same; and in case of his refusal to pay such expenses forthwith, then such carriage, and horse or horses, and harness, or a sufficient part thereof to defray such expenses, shall be sold by order under the hand of such justice; and after payment thereof of all such expenses as aforesaid, together with the expenses of such sale, the surplus (if any) of the produce of such sale together with such part of the carriage, and horse or horses, and

harness, as shall remain unsold, shall be rendered and restored to the owner. (See this enactment amended in part by 5 & 6 Vict. c. 79, s. 11, *post*.)

Sect. 31. From and after the passing of this act it shall be lawful for the proprietor or driver of any stage carriage duly licensed by the commissioners of stamps, and having thereon the proper numbered plates or plate required by law to be placed on stage carriages, or for any other person, to stand or ply with such carriage for passengers to be carried for hire, and to take up, convey, and set down such passengers with or from such carriage at any place either within the distance of five miles from the general post-office in the city of London or elsewhere, anything contained in an act passed in the last session of parliament, for amending the laws relating to hackney carriages, notwithstanding; provided that for this purpose such stage carriage shall not deviate from the proper route or line of road, if any shall be specified or described in the licence relating to such stage carriage, or shall not go beyond the limits allowed by such licence.

Sect. 32. If any person shall forge or counterfeit, or shall cause or procure to be forged, counterfeited, or resembled, any numbered plate directed to be provided, or which shall have been provided, made, or used in pursuance of this act or of any former act relating to the duties payable in respect of stage carriages, or shall wilfully fix or place, or shall cause or permit or suffer to be fixed or placed, upon any stage carriage or other carriage, any such forged or counterfeited plate, or if any person shall sell or exchange or expose to sale or utter any such forged or counterfeited plate, or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have or be possessed of any such forged or counterfeited plate, knowing such plate to be forged or counterfeited, every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person in committing any such offence as aforesaid, shall be adjudged guilty of a misdemeanor, and being thereof convicted shall be liable to be punished by fine or imprisonment, or by both, such imprisonment to be in the common gaol or house of correction, and either with or without hard labour, as the court shall think fit; and in Scotland, whenever any person shall so offend, he shall be liable to be punished in like manner; and it shall be lawful for any officer of stamp duties, or for any constable or other peace officer, or any toll-gate keeper, to seize and take away any such plate, in order that the same may be produced in evidence against such offender, or be disposed of as the commissioners of stamps shall think proper.

Sect. 33. If after the expiration or discontinuance of any licence granted to any person under any former act relating to stage carriages, or under this act, such person shall use, detain, or have in his possession the numbered plate or plates mentioned in such licence, or shall neglect to deliver the same to the commissioners of stamps or to their proper officer, or if any person shall use or detain or have in his possession any numbered plate or plates without having a licence in force granted to him under any such act as aforesaid, and relating to such plate or plates, or if any person shall use or detain or have in his possession any numbered plate or plates which shall have been recalled by the commissioners of stamps or their proper officer, whether the licence relating thereto shall be in force or not, it shall be lawful for any officer of stamp duties, or for any constable or other peace officer, or for any toll-gate keeper, to seize and take away any such plate or plates wheresoever the same may be found, in order to deliver the same to the said commissioners; and for the purpose of seizing and taking away any such plate or plates, or any forged or counterfeited plate or plates, it shall be lawful for such officer of stamp duties, constable, peace officer, or toll-gate keeper, to stop any stage carriage or other carriage upon which the same may be placed; and any person who

1. *Regulations as to Stage Carriages, Licences, and Duties.*

2 & 3 Will. 4, c. 120.

Licensed stage carriages exempt from provisions of acts relating to hackney carriages.

Forging stage carriage plates, &c., a misdemeanor.

Plates detained after expiration of licences, or used by persons not having licences in force, or recalled plates, may be seized.

Penalty for ob-

1. *Regulations as to Stage Carriages, Licences, and Duties.* shall molest, obstruct, or hinder such officer of stamp duties, constable, peace officer, or toll-gate keeper in seizing or endeavouring to seize or take away any such plate or plates as aforesaid shall forfeit 20*l*.

2 & 3 Will. 4, c. 120.  
structing officers  
seizing such  
plates.

Penalty for carry-  
ing a greater  
number of pas-  
sengers than  
authorised by  
licence, 5*l*. for  
each passenger  
above number.

Sect. 34. If the number of passengers at any one time conveyed in, upon, or about any licensed stage carriage shall be greater in the whole than the number of passengers which the licence granted in respect of such carriage shall authorise or allow to be conveyed thereby, or if the number of passengers at any one time conveyed in the inside of such stage carriage, or upon or about the outside thereof, shall be greater respectively than the greatest number of inside or outside passengers respectively specified in or upon such licence and allowed thereby, the person to whom such licence shall have been granted shall forfeit 5*l*. for every passenger so conveyed above the number allowed by such licence to be conveyed in the whole, or in the inside, or on or about the outside of such carriage respectively; and the driver of such stage carriage at the time when such offence shall be committed shall also forfeit 5*l*. (But see now the 5 & 6 Vict. c. 79, *post*, p. 661.)

Two children  
under seven years  
old reckoned as  
one passenger.

Sect. 35. Provided always, that no child or children in the lap shall be counted as a passenger or passengers under any of the clauses or provisions of this act or of the schedule (A.) hereunto annexed; and that no child not in the lap, but under seven years of age, shall be so counted as aforesaid, unless there shall be more than one such child; and if there shall be more than one such child not in the lap, but under seven years of age, then two such children shall be accounted equal to one adult person, and considered as one passenger, and so on in the same proportion.

Particulars to be  
painted on stage  
carriages (a).

Sect. 36. No stage carriage shall be used or employed unless nor until there shall be truly painted in words at length, and in legible and conspicuous letters one inch at the least in the height, and of a proper and proportionate breadth, and in a colour different from and opposite to the colour of the ground on which such letters shall be painted, upon some conspicuous part of each side of such carriage, and clear of the wheel or wheels thereof, so that the same shall be at all times plainly and distinctly visible and legible, the christian name and surname of the proprietor or of one of the proprietors of such carriage, and also the names of the extreme places from which and to which such carriage shall be licensed to travel or go; and there shall also be painted in manner aforesaid, upon some conspicuous place on the back of such stage carriage, and so that the same shall be at all times plainly and distinctly visible and legible, the greatest number of passengers allowed to be carried in or by such carriage, and also when such carriage shall be licensed to carry both inside and outside passengers, the greatest number of passengers allowed to be taken in the inside, and on the outside thereof respectively, [see the 2 & 3 Vict. c. 66, s. 2, *post*, p. 661.] and if any person shall use or employ any stage carriage upon which all such particulars as aforesaid shall not be truly painted in such legible and conspicuous letters and in manner aforesaid, or in case such particulars or any of them shall be partially obliterated or defaced from or upon any such carriage, then if any such person shall neglect to paint or cause to be painted again, in manner aforesaid, every particular so obliterated or defaced, such person so offending in any of the cases aforesaid shall forfeit 5*l*. (See now the 5 & 6 Vict. c. 79, s. 14, as to painting the number of passengers the carriage is constructed to carry, *post*, p. 664.)

Penalty for neg-  
lecting to paint  
such particulars.

(a) The inscription on a stage coach of the name of the party licensed to use it, was evidence against him of the ownership, as well in an action as on summary proceedings, under

the 25 Geo. 3, c. 51; 50 Geo. 3, c. 48; and 9 Geo. 4, c. 49, now repealed. (*Barford v. Nelson*, 1 *Barn. & Adol.* 571.)

Sect. 37. No outside passenger nor any luggage shall be carried on the top or roof of any stage carriage the top or roof of which from the ground shall be more than eight feet nine inches, or the bearing of which on the ground shall be less than four feet six inches from the centre of the track of the right or off wheel to the centre of the track of the left or near wheel; and if any outside passenger or luggage shall be carried on any such carriage in any manner contrary to the directions aforesaid, the driver of such carriage at the time when such offence shall be committed shall forfeit 5*l*. (See 5 & 6 Vict. c. 79, s. 17, *post*, p. 665.)

1. *Regulations as to Stage Carriages, Licences, and Duties.*

2 & 3 Will. 4, c. 120.

Certain stage carriages shall not take outside passengers or luggage.

The 38, 39, 40, 41, 42 & 44 sections of 2 & 3 Will. 4, c. 120, are repealed by the 3 & 4 Will. 4, c. 48.

Sect. 43. No luggage which shall be carried on the top or roof of any stage carriage drawn by four or more horses shall in any case exceed ten feet and nine inches in height from the ground, nor shall any luggage which shall be carried on the top or roof of any stage carriage drawn by two or three horses only in any case exceed ten feet and three inches in height from the ground, measuring to the highest point of any part of such luggage when placed upon the top or roof of any such carriages respectively; and if any such luggage shall in either of the cases aforesaid exceed the height by this act in that behalf limited, the driver of such carriage at the time when such offence shall be committed shall forfeit 5*l*.

Luggage on top of stage carriage shall not exceed the height herein specified.

Sect. 44. It shall not be lawful for any person to sit or be carried upon any luggage placed on the roof of any stage carriage, nor upon that part of the roof allotted for luggage; and if any person shall sit or be carried upon any luggage or upon that part of the roof allotted for the same, contrary to the provisions of this act, he shall forfeit 5*l*., and the driver of such carriage at the time when such offence shall be committed shall also forfeit 5*l*.

No person to sit on luggage placed on roof.

Sect. 45. The proprietor of any stage carriage and the driver thereof shall, when thereunto respectively required by any justice of the peace, or by any constable, or any surveyor of any highway or turnpike road, or by any toll-gate keeper, or any officer of stamp duties, or by any passenger travelling with such carriage, permit and allow such carriage and the luggage thereon to be measured, and the number of passengers in, upon, or about such carriage to be counted; and it shall be lawful for any passenger to require the driver of any stage carriage to stop the same at any toll-gate, and to require the toll-gate keeper at such gate to count the number of passengers upon the box, and in, upon, or about such carriage, and to measure and ascertain the height of the luggage thereupon, and to sign a memorandum in writing of the number of such passengers in the inside and on or about the outside of such carriage (distinguishing the number on the box) and of the height of such luggage, and to deliver such memorandum to the person so requiring the number of passengers to be counted or the height of the luggage to be measured; and the toll-gate keeper at every such gate shall provide and keep at such gate a proper measure for measuring the height of any stage carriage and of the luggage thereupon; and if any proprietor of any stage carriage or the driver thereof shall, when thereto respectively required as aforesaid, refuse to permit and allow such carriage and the luggage thereupon to be measured, or the number of inside or outside passengers to be counted, or if such driver shall, on being so required as aforesaid, refuse or neglect to stop such carriage at any toll-gate for the purpose aforesaid, such proprietor or such driver so refusing or neglecting as aforesaid shall forfeit 5*l*.; and if any toll-gate keeper shall neglect to provide and keep at any such gate a proper measure for the purposes aforesaid, or shall on being thereunto requested as aforesaid, refuse to count the number of such passengers, or to measure and ascertain the height of such luggage, or to sign a memorandum in writing of the number of such passengers or of the height

Justices, road surveyors, toll collectors, &c., authorised to cause stage carriages and luggage to be measured and passengers to be counted.

Penalty on the proprietor or driver for refusal.

Penalty on toll-gate keeper neglecting to provide a measure, or refusing to count passengers, or to measure luggage, &c.

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2 & 3 Will. 4, c. 120.

of such luggage in manner hereinbefore directed, or to deliver such memorandum so signed to the person entitled to require the same, or shall sign or give any memorandum in which any of the particulars aforesaid shall not be truly set forth, every such toll-gate keeper so offending shall forfeit 5*l.*: Provided always, that it shall not be lawful for any one passenger to require the driver of any stage carriage to stop the same for any such purpose as aforesaid more than once during any one journey, unless after the counting of such passengers or the measuring of such luggage, any additional passenger or passengers shall be taken up, into, or upon such stage carriage, or additional luggage shall be placed on the top or roof thereof during the same journey.

Sect. 46 is repealed by 5 & 6 Vict. c. 79, s. 12, *post*, p. 664.

Penalty on driver quitting box before a proper person shall stand at horses' heads;

or permitting any person to drive, or quitting the box;

or concealing or misplacing plates:

on guard discharging fire-arms unnecessarily;

or neglecting to take care of luggage, or asking more than proper fare;

or neglecting to account to his employer;

or assaulting or using abusive language to any person.

Penalty on driver or guard endangering passengers or property through negligence, &c., 5*l.*

Sect. 47. If the driver of any stage carriage drawn by three or more horses shall at any place where such carriage shall stop quit the box of such carriage, or the horses drawing the same, without delivering the reins into the hands of some fit and proper person, or before some fit and proper person shall be placed and shall stand at the heads of the horses or some of them belonging thereto, and shall have the command thereof; or if any person so placed, and standing at the heads of such horses shall leave such horses before some other proper person shall be placed and stand in like manner, and have the command of such horses, or before the driver of such stage carriage shall have returned and seated himself upon the box and taken the reins; or if the driver of any stage carriage shall permit any passenger or any person other than himself to drive the horses drawing such carriage; or if the driver of any stage carriage shall quit the box of such carriage without reasonable occasion, or for a longer time than such occasion shall absolutely require; or if the driver of any stage carriage shall suffer any plate or the number on any plate fixed or placed thereon pursuant to this act to be in any manner concealed from public view, or shall suffer any such plate to be inverted, or so fixed or placed that the number thereon shall not be plainly and distinctly legible; or if any person travelling as guard to any stage carriage shall, whilst the horses are harnessed or in the act of being harnessed thereto, and whilst any passenger shall be in, upon, or about such carriage, discharge any fire-arms except for the necessary defence of such carriage or of the passengers or luggage being in or about the same; or if the driver or conductor or guard of any stage carriage shall neglect to take due care of any luggage whatsoever carried or to be carried by such carriage; or if any such driver or conductor or guard shall demand or receive for the fare of any passenger more than the sum which such passenger shall be liable to pay, or more than the money properly chargeable for the carriage of any luggage; or if any such driver or conductor or guard shall, when thereto required, neglect or refuse faithfully to account to his employer for all monies received by him in respect of any passenger or any luggage which shall be carried by such carriage; or if any such driver or conductor or guard shall assault or use abusive or insulting language to any person travelling or about to travel or having travelled as a passenger with or by such carriage, or to any person accompanying or attending upon any such passenger in coming to or going from any such carriage, every such offender in any of the several cases aforesaid shall forfeit 5*l.*

Sect. 48. If the driver or conductor or guard of any stage carriage, or any other person having the care thereof, or employed in, upon, or about such carriage, shall, through intoxication or negligence, or by wanton and furious driving, or by or through any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property of the owner or proprietor of such stage carriage or of any other person, every such person so offending shall forfeit 5*l.* (See Title, "*Furious Driving.*")

As to death occasioned by furious driving, &c., see Title, "*Homicide*."

Sect. 49. Whenever it shall happen that the driver or conductor or guard of any stage carriage shall have committed any offence against this act for the commission whereof any penalty is by this act imposed upon such driver or conductor or guard, and not upon the proprietor of such carriage, and such driver or conductor or guard shall not be known, or being known cannot be found, then the proprietor of such carriage shall be liable to every such penalty as if he had been the driver or conductor or guard of such carriage at the time when such offence was committed: Provided always, that if any such proprietor shall make out, to the satisfaction of the justice of the peace before whom any complaint or information shall be heard, by sufficient evidence, not resting on his own testimony, that the offence was committed by such driver or conductor or guard without the privity or knowledge of such proprietor, and that no profit, advantage, or benefit, either directly or indirectly, has accrued or can accrue to such proprietor therefrom, and that he has used his endeavour to find out such driver or conductor or guard, and given all reasonable information in answer to inquiries respecting him, such justice shall discharge the proprietor from such penalty, and shall levy the same upon such driver or conductor or guard when found.

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2 & 3 Will. 4, c. 120.

Owners to be liable for penalties in cases where driver or guard is not known or cannot be found.

Sects. 50, 51 and 52 relate to railways.

Sect. 53 and following, which secure the duties granted by this act, and relate to the duties payable in respect of horses let for hire, and all clauses, provisions, and regulations for levying, collecting, and securing the said duties, so far as they relate to the same, are now repealed. (See sect. 1 of 16 & 17 Vict. c. 88, *post*, p. 670.)

Sect. 98. If any officer of stamp duties, or other person employed in the execution of this act, in relation to the said duties on horses let for hire, shall wilfully refuse or neglect to do or perform any matter or thing by this act required or directed to be done or performed by such officer or person, whereby any of his Majesty's subjects shall sustain any damage, such officer or person shall be liable, in an action to be founded on this statute, to answer to the party aggrieved for all such damages, with full costs of suit.

Officers neglecting their duty to be liable to actions.

Sect. 99. It shall be lawful for any inspector of stamp duties, or any collector of the duties by this act granted in respect of horses let for hire, or for any other person authorised by the commissioners of stamps, on producing and showing (if required so to do) his appointment or authority in writing from time to time, to enter into any toll-house or other place at which any toll is or shall be by law payable or any ticket shall be receivable under this act, and in such toll-house or other place to remain so long as such inspector, collector, or other person so authorised shall think fit and requisite, for the purpose of examining and checking the stage carriages travelling upon any turnpike or other road, or for the purpose of receiving and examining the tickets relating to horses let for hire; and if any toll-gate keeper, toll collector, or other person shall refuse to permit any such inspector, collector, or other person authorised as aforesaid to enter into or to remain in any toll-house or other such place as aforesaid, or shall obstruct or hinder or molest such inspector, collector, or other person authorised as aforesaid in entering into or remaining in such toll-house or place for the purposes aforesaid, or if any toll-gate keeper, toll collector, or other person shall in any way hinder, molest, or disturb, or use abusive or insulting language to any such inspector, collector, or other person authorised as aforesaid, either in the discharge of his duty or in the reasonable use of such toll-house or other place as aforesaid, every person so offending shall forfeit 20*l*.

Inspectors and collectors may enter toll-houses, to check stage carriages, and horses let for hire, and to receive tickets, &c.

Penalty for refusing to permit them to enter, or obstructing them in discharge of duty.

Sect. 100. If any person shall receive any sum of money, or any other consideration or reward of any kind whatsoever, for aiding or

Penalty on conniving at offences



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3 & 4 Will. 4, c. 48. So much of 2 & 3 Will. 4, c. 120 as relates to the number or distribution of outside passengers, or as requires a separate division for luggage on the roof of a stage carriage, repealed.

assisting in or for conniving at the commission of any offence against this act, he shall forfeit 20l.

By 3 & 4 Will. 4, c. 48, which recites and amends 2 & 3 Will. 4, c. 120, relating to stage carriages in Great Britain, &c., it is enacted, "That from and after the passing of this act, so much and such part and parts of the said recited act as in any manner regulate or restrict the number of passengers allowed to be carried on the outside of any stage carriage, or regulate or relate to the distribution or placing of or the manner of carrying the outside passengers on any stage carriage, and also so much and such part of the said recited act as requires that a separate division or space shall be allotted for luggage on the top or roof of any stage carriage, shall be and the same is and are hereby repealed: Provided always, that nothing herein contained shall extend or be construed to extend to repeal or alter any clause of the said recited act, by which any penalty is imposed for conveying a greater number of passengers on the outside of any licensed stage carriage than is specified and allowed in and by the licence granted in respect of such carriage."

Sect. 2. As to outside passengers allowed to be carried by stage carriages, and sect. 3 are virtually repealed by 5 & 6 Vict. c. 79, s. 17, &c., *post*, p. 665.

No person to sit on luggage on the roof, nor more than one person besides the driver on the box.

Sect. 4. No person shall be allowed to sit or be carried upon any luggage placed on the roof of any stage carriage, and that not more than one passenger or other person shall be allowed to sit or be carried upon the box with the driver of any stage carriage; and that if any person shall sit or be carried upon any luggage placed as aforesaid, or if more than one person besides the driver shall sit or be carried upon the box of any stage carriage, the driver of such stage carriage at the time when any such offence shall be committed shall forfeit 5l.

Mode of recovering penalties.

Sect. 5. All penalties which may be incurred under the provisions of this act may be prosecuted for and recovered by information or complaint before a justice of the peace in the name of any person who will inform or complain in that behalf, by the same ways and means and in the same manner and form as are and is provided for the recovery of any penalty incurred under the said recited act; and all clauses, regulations, and provisions contained in the said recited act, relating to the recovering, levying, or mitigating of the penalties thereby imposed, shall be of full force and effect, and shall be applied and put in execution for the recovering, levying and mitigating of the penalties by this act imposed, as fully and effectually to all intents and purposes as if such clauses, regulations, and provisions had been repeated and specially enacted in this act with reference to the penalties by this act imposed. (See *post*, p. 673.)

Application of penalties.

Sect. 6. Provided always, that all pecuniary penalties imposed by or incurred under this act and under the said recited act, or either of them, whether the same shall be sued or prosecuted for and recovered by or in the name of his Majesty's attorney general in England, or his Majesty's advocate for Scotland, or the solicitor of stamps, or any other officer of stamp duties in England or Scotland respectively, or for the recovery of which any information or complaint shall be made or any action or suit commenced by any other person or persons whomsoever, shall go and be applied to the use of his Majesty, anything in the said recited act to the contrary thereof notwithstanding; and all such penalties shall be paid or remitted to the solicitor of stamps in the manner directed by the said act, and shall be deemed to be part of his Majesty's revenue arising from stamp duties, and shall accordingly be accounted for and paid by the said solicitor to the receiver general of stamp duties: Provided always, that it shall be lawful for the commissioners of stamps, at their discretion, to give all or any part of such penalties as rewards to any person or persons who shall have

detected the offences for or in respect of which such penalties shall have been incurred, or who shall have given information which may have led to the discovery thereof or to the conviction of the offenders. (See further clauses, Title "*Hackney Coaches*." )

By 2 & 3 Vict. c. 66, s. 2, reciting "that by the 2 & 3 Will. 4, c. 120, it is required that there shall be painted in manner therein mentioned upon every stage carriage the greatest number of passengers allowed to be carried in or by such carriage, and also, when such carriage shall be licensed to carry both inside and outside passengers, the greatest number of passengers allowed to be taken in the inside and on the outside thereof respectively; and that upon some stage carriages there are painted several inscriptions differing from each other as to the number of passengers which such stage carriage is licensed to carry, and one or more of them differing in that respect from the licence granted for such stage carriage, whereby the object and intention of the said last recited enactment are defeated, and it is expedient to provide a remedy for the same;" it is enacted, that "if any stage carriage shall be used having any inscription written, painted, or marked thereon importing or signifying, or intended to import or signify, that such carriage is licensed or authorised to carry or convey thereby, either in the whole or in the inside or on or about the outside thereof, any number of passengers other than the actual number which such carriage is by the licence relating to the numbered plate or plates which shall be fixed or placed upon such carriage expressly authorised to carry either in the whole or in the inside or on or about the outside thereof respectively, the proprietor of such carriage shall forfeit for every such offence the sum of 5*l*. to be recovered and applied in like manner as any penalty incurred under the said recited act may be recovered and applied." (See the 2 & 3 Will. 4, c. 120, s. 36, *ante*, p. 656.)

Stat. 5 & 6 Vict. c. 79, "An Act to repeal (amongst others) the Duties payable on Stage Carriages, and to grant other Duties in lieu thereof," repeals *inter alia* the duties granted and imposed by the 2 & 3 Vict. c. 66, for and in respect of every mile which any stage carriage shall be licensed to travel, and the duties granted and imposed by the 2 & 3 Will. 4, c. 120, for and in respect of every licence for keeping, using, or employing any stage carriage.

Section 2. That in lieu of the duties by this act repealed there shall be raised, levied, collected, and paid, unto and for the use of her Majesty, her heirs and successors, in and throughout Great Britain, for and in respect of every licence for keeping, using, or employing any stage carriage in Great Britain, and for and in respect of every stage carriage, and for other matters not relating to stage carriages, the several duties or sums of money set down in figures against the same respectively, or otherwise specified and set forth in the schedule to this act annexed, (reduced by 29 Vict. c. 36, and 18 & 19 Vict. c. 78,) and that the said schedule shall be deemed and taken to be a part of this act; and that all the said duties shall be under the care and management of the commissioners of stamps and taxes for the time being, and shall be denominated and deemed to be stamp duties. (See 26 & 27 Vict. c. 33, s. 6, varying this as to particular carriages, *post*, p. 667.) For the scale of duties, see "*Excise*."

Section 3 makes provision for stamping with dies, &c., certain documents.

Sections 4, 5, 6 and 7, relate to railways and the duties payable for the conveyance of passengers by them.

Section 8. And whereas it is expedient to alter and amend the 2 & 3 Will. 4, c. 120, in certain respects relating to licences for stage carriages;

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2 & 3 Vict. c. 66. Penalty for marking upon stage carriages any inscription differing from the licence as to the number of passengers authorised to be carried thereby.

5 & 6 Vict. c. 79.

Duties repealed. On stage carriages.

New duties to be levied as set forth in the schedule (a).

To be under commissioners of stamps and taxes.

Commencement of stage carriage licences.

(a) As to when duties attach, &c., see *Re Day*, 1 M'Clel. 384.

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5 & 6 Vict. c. 79.

Supplementary licences may be granted to use same carriage on a different line of road.

Widow or child may continue to use licences granted to deceased parties.

Licences not to be granted to minors.

Certified copies of licences to be evidence.

be it therefore enacted, That from and after the commencement of this act every licence for keeping, using, or employing any stage carriage (except an original licence granted between the first Monday in October and the first day of November in any year) shall be dated on the day on which the same shall be granted, and shall commence and have effect upon the same day, or any subsequent day, to be specified in such licence as the day of the commencement thereof; provided that no supplementary licence shall be granted in lieu of any licence which shall have been previously granted before the time appointed for the commencement of such last-mentioned licence. (See sec. 10 of 26 & 27 Vict. c. 33.)

Sect. 9. And be it enacted, That whenever any person to whom any licence in force to keep, use, or employ a stage carriage shall have been granted shall be desirous of using, or employing the said stage carriage upon any line of road other than that specified in such licence, the commissioners of stamps and taxes, or their proper officer upon application to them or him, as in other cases of supplementary licences is required in pursuance of the said act passed in the second and third years of the reign of his late Majesty king William the Fourth, shall grant to such person a supplementary licence with such alteration or variation, as aforesaid, as well as with any other alteration or variation, if required, as permitted by the last-mentioned act, upon payment of the duty hereby granted upon any supplementary licence; (see 2 & 3 Will. 4, c. 120, s. 16, *ante*, p. 650;) and also whenever any person to whom a licence to keep, use, or employ a stage carriage shall have been granted, shall die during the existence of such licence in force, and shall leave a widow or a child of full age, and also whenever any woman to whom any such licence shall have been granted shall marry during the existence of such licence in force, and in any of such cases respectively such surviving widow, or the said child, or the husband of such woman shall continue and carry on the business of such deceased person or of such woman respectively, it shall be lawful for the said commissioners, or their proper officer, if they or he shall think fit, upon the application of any such widow or child or husband, as the case may be, and on his or her signing a requisition for that purpose, in such form as the said commissioners shall approve, and in the case of such deceased person, with the consent of his or her executor or administrator, to grant to such widow, child, or husband respectively a supplementary licence in lieu of such pre-existing licence so granted to such deceased person or such woman respectively, in the same manner and for the same purposes as any such supplementary licence might have been or may be granted to such deceased person or such woman under the said act or this act in case he or she had not died or married respectively, upon payment of the duty by this act granted thereon; (see 2 & 3 Will. 4, c. 120, s. 29, *ante*, p. 653;) and every such supplementary licence in any of the cases aforesaid, and the person to whom the same shall be granted, shall be under and subject to the same regulations and liabilities, and such person shall be entitled to the same advantages as if this provision had been inserted and contained in the said 2 & 3 Will. 4, c. 120, and such supplementary licence had been granted under the authority thereof: Provided that nothing herein contained shall extend or be construed to extend to authorise the granting of any such licence, whether original or supplementary, to any person who shall not have attained the full age of twenty-one years.

Sect. 10. And whereas by the said recited act of 2 & 3 Will. 4, c. 120, it is enacted that a copy of every licence to keep, use, or employ a stage carriage, and of every indorsement made thereon, shall be kept at the office or place from which such licence shall be issued, in order that every person may have a copy thereof, paying 1s. for the same; and it is expedient that such copies, certified as hereinafter mentioned,

should be received as evidence of the granting and of the contents of such licences respectively, and of the indorsements thereon; be it therefore enacted, That the commissioners of stamps and taxes, or the officer by whom any such licence shall have been granted, or other officer of stamp duties authorised by the said commissioners in that behalf, shall, upon application made to them or him for that purpose, deliver to the person requiring the same a copy of any such licence, certified according to this act, on payment of the sum of 1s.; and in all proceedings and upon all occasions whatsoever a copy of any such licence, and of every indorsement thereon (if any), the same being made and taken from the copy thereof filed or kept at such office or place as aforesaid, certified to be a true copy under the hand of one of the said commissioners, or of the officer by whom such licence shall have been granted, or other officer authorised as aforesaid, upon proof made that such certificate hath been signed with the handwriting of a person described in or by such certificate as such commissioner or officer, and whom it shall not be necessary to prove to be a commissioner, shall be received as evidence, against any and every person appearing by such copy to be named in such licence, that the same was duly granted by such person, and of the contents thereof, and of every indorsement thereon; and in any such case the said Commissioners, or any of their officers, shall not be required or compellable to produce in any court, or at any place out of the office of the said commissioners or officers respectively, the original of any such licence or indorsement, or any copy thereof filed or kept in any such office, or any entry or memorandum relating to such licence in the books of the said commissioners or officers, or to give any other evidence or proof of the granting or contents of any such licence or indorsement than such copy certified as aforesaid.

Sect. 11. And whereas by the said last-mentioned act it is enacted, that if any carriage be found upon or near to any public highway, and any person shall ply for passengers to be conveyed by such carriage for hire at separate fares, such carriage not having placed and fixed thereupon the numbered plates required by the said act to be fixed on stage carriages, the driver of such carriage, or the person having the care thereof, or plying for passengers to be conveyed thereby, such driver or person not being the owner of such carriage, shall forfeit 10%, and if he be such owner, he shall forfeit 20%; and moreover, that it shall be lawful for any constable or other peace officer, and any officer of stamp duties, without any warrant for that purpose, to apprehend such driver or other person, and to carry and convey him before any justice of the peace, to be dealt with as therein mentioned, and also to drive or take such carriage, with the horse or horses harnessed thereto or drawing the same, or to cause the same to be driven or taken to some public green-yard or some livery stables, or other place of safety, and there to lodge the same for safe custody until the determination of such justice shall be known; and such carriage, horse or horses, and harness, are thereby made liable to the payment of such penalty, and of such costs and expenses, or of such expenses only, as the case may be, as are therein mentioned (*ante*); and it is expedient to amend the said provision by extending the same to the cases hereinafter mentioned; be it therefore enacted, That if any stage carriage, whether licensed or not, shall be used upon any public highway for the purpose of carrying or conveying any passengers, one or more of whom shall be charged or shall pay separate or distinct fares or a separate and distinct fare, or at the rate of separate or distinct fares for their respective places or seats, or his place or seat therein, or conveyance thereby, such carriage not having placed and fixed thereupon the numbered plates required by the said last-mentioned act to be fixed on stage carriages, the driver, and also the conductor or guard thereof, or other person having the direction, management, or care thereof, or assisting therein,

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5 & 6 Vict. c. 79.

Recital of 2 & 3 Will. 4, c. 120, s. 30, relating to stage carriages plying for hire without plates.

Recited enactment amended.

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5 & 6 Vict. c. 79.

shall forfeit the sum of 10*l.*, or if he be the owner, the sum of 20*l.*; and moreover it shall be lawful for any officer of stamp duties, without any warrant for that purpose, with or without the aid and assistance of any constable or peace officer or other person, at any place where the journey for the performance of which such carriage shall be used shall terminate, or on the return of such carriage to the place from whence such journey commenced, to apprehend such driver, and such conductor, guard or other person, and to carry and convey him before any justice of the peace having jurisdiction where the offence shall be committed, to be dealt with as hereinafter and as in the said last-mentioned act is mentioned; and it shall also be lawful for such officer of stamp duties, with or without such aid and assistance as aforesaid, to seize and take such carriage, with the horse or horses harnessed thereto, or drawing or having drawn the same, and to drive or take the same, or to cause the same to be driven or taken, to some public green-yard or some livery stables, or other place of safety, and there to lodge the same for safe custody until the determination of such justice shall be known; and such justice shall proceed therein as in the said last-mentioned act is provided in relation to the offences before described; and every such penalty respectively, and also such costs and expenses as in the said last-mentioned act are mentioned respectively, shall be levied and recovered by the same ways and means, and, if necessary, the offender committed for the same term or time as in the said last-mentioned act are in that behalf provided in relation to the aforesaid penalties thereby imposed: Provided always, that nothing in this act contained shall in any way affect or alter, or be deemed to affect or alter, the provision contained in the said last-mentioned act, so far as the same relates to the offence hereinbefore described.

2 & 3 Will. 4, c. 120, s. 46, excepting mail coaches from the regulations as to plates, repealed.

Sect. 12. And whereas it is expedient that all mail coaches licensed to carry passengers for hire should have fixed thereon the usual numbered plates, in like manner as other stage carriages; be it therefore enacted, That so much of the said last-mentioned act as enacts that none of the regulations therein contained relating to the plates to be fixed upon any stage carriage shall extend to any mail coach employed in the service of the general post office, built or constructed according to the regulations of the postmaster general, and not carrying more than four outside passengers, shall be and the same is hereby repealed.

No stage carriage to carry a greater number of passengers than it is constructed to carry.

Sect. 13. And whereas the repealing of the duties in respect of the passengers to be conveyed by stage carriages in Great Britain, and granting a uniform rate or duty on stage carriages in lieu thereof, will render certain regulations necessary for preventing the overloading of such carriages, and the dangers and inconveniences consequent thereon; be it therefore enacted, That no stage carriage shall be allowed to carry at one time a greater number of passengers in the whole, or in the inside or on the outside thereof than the same is constructed to carry according to the regulations of this act; and that no such carriage shall be deemed to be constructed to carry a greater number of passengers than the same will contain at one time, upon fit and proper seats provided therein or thereupon for that purpose, allowing for every passenger, on an average, upon each and every separate seat, a space convenient for sitting thereon of sixteen inches, measuring in a straight line lengthwise on the front of each seat: Provided always, that no child under five years of age, sitting in the lap, shall be deemed a passenger within the meaning of this act.

What number of passengers a carriage shall be deemed to be constructed to carry.

Number of passengers which a carriage is constructed to carry to be painted thereon.

Sect. 14. That no stage carriage shall be used or employed unless nor until there shall be truly painted, in words at length, and in legible and conspicuous roman letters, one inch at the least in height, and of a proper and proportionate breadth, and in a colour different

from and opposite to the colour of the ground on which such letters shall be painted, and in one or more straight horizontal line or lines, upon some conspicuous part on the outside of such carriage, at the back thereof, and also in the inside thereof, and where the same shall be constructed to carry passengers in different compartments, then in each such compartment, and so that the same shall be at all times plainly and distinctly visible and legible, the number of passengers which such carriage is constructed to carry according to this act in the whole, and on the outside and in the inside thereof respectively, and in each such compartment; and if any stage carriage shall be used or employed without having all and every such particulars painted thereon in manner aforesaid, or if any stage carriage shall be used or employed having thereon or in or on any part thereof any words or figures, or any particulars whatever, specifying or importing, or tending or intended to signify or import, that the same is constructed or in any way authorised to carry a greater number of passengers in the whole, or on the outside or in the inside thereof respectively, or in any compartment thereof, than the same is truly constructed to carry according to the regulations of this act, the proprietor thereof shall forfeit the sum of 10*l*.

Sect. 15. That if the number of passengers at any one time conveyed in, upon, or about any stage carriage shall be greater in the whole, or upon or about the outside thereof, or in the inside thereof, or in any compartment thereof respectively, than the same is constructed to carry, according to the regulations of this act, or than any particulars painted thereon shall specify in the whole, or upon the outside thereof, or in the inside thereof, or in any compartment thereof respectively, the driver and conductor or guard thereof for the time being respectively shall forfeit the sum of 5*l*.

Sect. 16. That it shall be lawful for any constable or peace officer at any time, and also for any person travelling or having immediately before travelled by any stage carriage, in any case where he shall have reason for believing or suspecting that a greater number of passengers are carried or are about to be carried, or have immediately before, or at any time during the journey last performed, been carried, by such stage carriage, to measure the seats or any of the seats in or upon such carriage, in order to ascertain the length thereof respectively, or the number of passengers which the said carriage is constructed to carry; and if any person shall refuse to permit the seats in or upon any such stage carriage to be measured, or shall by any means or in any way prevent or attempt to prevent any constable, peace officer, or other such person as aforesaid from or hinder or obstruct him in measuring the same, the person so offending shall forfeit for every such offence the sum of 5*l*.

Sect. 17. That no stage carriage the top or roof of which shall be more than eight feet nine inches from the ground, or the bearing of which on the ground shall be less than four feet six inches from the centre of the track of the right or off wheel to the centre of the track of the left or near wheel, shall be allowed to carry in any case more than the number of outside passengers hereinafter respectively mentioned; (that is to say,) not more than five outside passengers where such carriage shall be constructed to carry, according to the regulations of this act, not exceeding nine passengers in the whole; not more than eight outside passengers where such carriage shall be constructed to carry, according to the said regulations, in the whole exceeding nine and not exceeding twelve passengers; not more than eleven outside passengers where such carriage shall be constructed to carry, according to the said regulations, in the whole exceeding twelve and not exceeding fifteen passengers; not more than twelve outside passengers where any such carriage shall be constructed to carry, according to the said regulations, in the whole exceeding fifteen

1. *Regulations as to Stage Carriages, Licences, and Duties.*

5 & 6 Vict. c. 79.

Penalty for using stage carriage without having proper particulars painted thereon.

Penalty for carrying greater number of passengers than carriage is constructed to carry or than particulars specify.

Constable or passenger may measure the seats.

Penalty for refusing to permit the measuring of the seats.

Number of passengers allowed to be carried on the outside of stage carriages.

1. *Regulations as to Stage Carriages, Licences, and Duties.*

5 & 6 Vict. c. 79.

Not to alter the regulations of 2 & 3 Will. 4, c. 120.

Recovery of penalties for offences relating to stage carriages.

Evidence in prosecutions relating to the carrying of passengers by stage carriages.

Penalties how to be recovered.

Powers, provisions, &c., of former acts to continue in force.

and not exceeding eighteen passengers; and not more than two additional outside passengers for every three additional passengers which any such carriage shall be constructed to carry, according to the said regulations in the whole; and if any greater number of outside passengers shall be carried by any such stage carriage as aforesaid than is hereinbefore specified and allowed, the driver (*a*) of such stage carriage, and the conductor or guard thereof, at the time when such offence shall be committed, shall respectively forfeit the sum of 5*l*.

Sect. 18. That nothing in this act contained shall in any way alter or affect any of the regulations or provisions contained in the said act passed in the second and third years of the reign of his late Majesty King William the Fourth, relating to stage carriages, now in force, which shall not be inconsistent with the regulations and provisions herein contained; and that all the clauses and provisions contained in the said act relating to the recovery of penalties before any justice of the peace shall be applied and be put in force for the recovery of any penalty imposed by or incurred under this act: Provided always, that it shall be lawful for any person to inform and prosecute for any penalty incurred as well by the owner or proprietor of any stage carriage, as by the driver, conductor, or guard thereof, under this act, so far as relates to the particulars to be painted on stage carriages, or to carrying a greater number of passengers by any stage carriage than the same is constructed to carry, or than is allowed by this act, provided the information be exhibited or the complaint made within ten days after the offence shall have been committed: Provided also, that where by this act any penalty is imposed upon the driver and conductor or guard of any stage carriage respectively, for one and the same offence, only one prosecution shall be had or maintained for the recovery of such penalty against such driver or conductor or guard, at the option of the person prosecuting for the same.

Sect. 19. That in any prosecution for the recovery of any penalty relating to the carrying of passengers by any stage carriage, or to the number of passengers which any stage carriage shall be constructed to carry, if proof be made of the due admeasurement of the height or bearing of such stage carriage, or of the seat or any of the seats in or upon any such carriage, or of the particulars painted thereon, the same shall be deemed and received as evidence thereof without the production of such carriage.

Sects. 20, 21, 22 and 23, relate to other matters than stage coaches.

Sect. 24. That all pecuniary penalties imposed by or which may be incurred under this act may be sued or prosecuted for and recovered by the same ways and means, and in the same manner and form, and be mitigated and applied as any other penalty incurred under any act relating to the stamp duties may be sued for, prosecuted, and recovered, mitigated and applied; and that all the powers, provisions, regulations, forfeitures, pains, and penalties contained in or imposed by any act or acts in force with relation to any of the duties under the management of the commissioners of stamps and taxes, so far as the same are or may be applicable in cases not by this act expressly provided for, and so far as the same shall not be superseded by, and as the same shall be consistent with, the express provisions of this act, shall be of full force and effect with respect to the duties by this act granted, and to the matters and things charged or charge-

(*a*) In the case of *R. v. Barker*, 3 *East*, 504, it was held on the 28 Geo. 3, c. 57, that one might be convicted as the driver of a stage coach, for permitting and suffering beyond the proper number of persons to go upon the roof of it, although he be not stated

to be a driver employed by the owner, and although he did not appear when summoned before the magistrate, in which case the second section of the act directs that the owner shall be liable to the penalty thereby laid on such driver.

able therewith, in respect of which duty is hereby granted, and shall be applied and put in execution for recovering, securing, and collecting the said duties hereby granted, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such powers, provisions, regulations, forfeitures, pains, and penalties had been repeated and specially enacted in this act with reference to the duties by this act granted and made payable.

Sect. 25. That wherever in this act, with reference to any person, matter, or thing, any word or words is or are used importing the singular number or the masculine gender only, yet such word or words shall be understood to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things, as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

By 10 & 11 Vict. c. 42, the duties upon stage carriages under 5 & 6 Vict. c. 79, are transferred to the management of commissioners of excise.

The duties in schedule to 5 & 6 Vict. c. 79, are varied by 18 & 19 Vict. c. 78, 26 & 27 Vict. c. 33, and 29 Vict. c. 36. See the scale of these duties, title "*Excise*."

The 18 & 19 Vict. c. 78, "An Act to reduce certain duties payable on Stage Carriages," recites the 5 & 6 Vict. c. 79, and enacts that there shall be charged and payable the following reduced duties on stage carriages in Great Britain; (that is to say,) *inter alia* for and in respect of every supplementary licence mentioned in the schedule of the said recited act, the duty of one shilling, in lieu of the duties granted in the like cases by the said recited act. (The 29 Vict. c. 36, reduces to one farthing the mileage duty on stage carriages licensed to travel.)

Sect. 2. The said duties by this act granted and made payable shall be raised, levied, collected, and paid in like manner, and by and under the like powers and authorities, rules and regulations, as the said duties granted by the said recited act are now raised, levied, collected, and paid under or by virtue of any act or acts in force.

The 26 & 27 Vict. c. 33, s. 6, enacts, that from and after the passing of this act the duties now payable by law for and in respect of the licences and stage carriages hereinafter in this clause described shall be reduced; and in lieu of the said duties now payable as aforesaid there shall be charged and paid in Great Britain for and in respect of every original licence, to be taken out yearly, to keep, use, or employ a stage carriage which shall be licensed to carry not more than eight passengers at one time, the duty of ten shillings; and for and in respect of every supplementary licence for the same carriage which shall be taken out in any case allowed by law during the period for which such original licence was granted, the duty of sixpence;

And for and in respect of every mile which any such stage carriage as aforesaid shall be licensed to travel, the duty of one halfpenny.

Sect. 7. If any person who shall have obtained a licence under this act to keep, use, and employ a stage carriage to carry not more than eight passengers at one time shall carry or convey in or upon such carriage more than eight passengers at one time, he shall for every such offence forfeit the sum of 10*l.*: and every person who shall be carried or conveyed in or upon any such carriage (except the driver thereof) shall be deemed to be a passenger conveyed for hire at a separate fare.

Sect. 8. It shall be lawful for the commissioners of inland revenue, whenever they shall deem it to be necessary for the accommodation of the public, to grant to any person an occasional licence to use a carriage for the conveyance of passengers at separate fares for one day, or for

1. *Regulations as to Stage Carriages, Licences, and Duties.*

5 & 6 Vict. c. 79.

Construction of terms used in this act.

18 & 19 Vict. c. 78.

Duties on stage carriages and supplementary licences reduced.

Reduced duties to be raised, &c., under existing powers.

26 & 27 Vict. c. 33.

Duty on stage carriages licensed to carry not more than eight persons reduced.

Penalty on persons keeping a stage carriage carrying a greater number of passengers than allowed by licence.

Occasional licences may be granted for carriages conveying passengers at separate fares.



1. *Regulations as to Stage Carriages, Licences, and Duties.* any longer period not exceeding six days in the whole, on payment of the following duties for and in respect of such licence; (that is to say,)

	For a licence for one day only :	£	s.	d.
26 & 27 Vict. c. 33.	For a carriage drawn by one horse only . . .	0	3	0
	For a carriage drawn by two horses and no more . . .	0	5	0
	For a carriage drawn by more than two horses . . .	0	10	0

And where any such licence shall be granted for a longer period than one day there shall be charged and paid for the same the further duty of one half of the before-mentioned rates respectively for every day after the first, in addition to the rate payable for one day.

Such occasional licences to be granted, and the carriages used under such regulations as the commissioners may prescribe.

Sect. 9. Every such occasional licence to use a carriage for the purpose aforesaid shall be granted under and subject to such conditions, rules, and regulations as the commissioners of inland revenue shall prescribe in that behalf, and the carriage for which such licence shall be granted shall be designated in such manner as the said commissioners shall require or direct; and in default of complying with any such rule, regulation, or direction, the person to whom such licence shall be granted shall forfeit the sum of 10*l*.

Stage carriage licences to expire on the first Sunday in November in each year.

Sect. 10. Whereas by the law in force licences to keep, use, and employ stage carriages expire on the first Sunday in the month of October in each year, and it is expedient to alter the time of the expiration thereof: Be it enacted, that all such licences taken out after the passing of this act shall (except in the cases hereinafter provided for) expire on the first Sunday in the month of November in each year; and every licence which shall be taken out after the first Sunday in the month of November in any year, and before the first day of December in the same year, shall be dated on the first Monday in November in the year in which the same shall be granted; and if taken out on or at any time after the first day of December in any year, shall be dated on the day when the same shall be granted; and every licence to use a stage carriage in force at the time of the passing of this act shall continue in force until the first Sunday in the month of November next after the passing hereof, and the holder of such licence shall be liable to and chargeable with the payment of the same rate and amount of duties as are chargeable upon him according to the terms of such licence until the said first Sunday in the last-mentioned month of November, unless such licence shall be sooner discontinued.

Stage carriage licences may be taken out for one quarter of a year.

Sect. 11. Provided always, that it shall be lawful for any person to take out a licence to keep, use, and employ a stage carriage for the conveyance of passengers at separate fares for the period of three months only, commencing on any of the several quarter days following, (that is to say,) the first day of April, the first day of July, the first day of October, and the first day of January in any year, paying for such licence one fourth part of the duty which would be payable for the granting of such licence for one whole year; provided also, that nothing in this act contained shall extend or be construed to repeal or supersede the provisions of the seventeenth section of the act passed in the sixth year of king George the fourth, chapter eighty-one, authorising the granting of excise licences for the remainder of a current year, but that such provisions shall be deemed to apply and shall be observed with regard to stage carriage licences for the remainder of any year ending on the first Sunday in November; and the several quarters corresponding with the termination of such year shall be deemed to consist of ninety-one days.

Not to supersede sect. 17 of 6 Geo. 4, c. 81, as to granting licences for the remainder of a current year.

Stage carriage licences may be transferred when the original holder discontinues busi-

Sect. 12. When any person to whom any licence shall have been granted for or in respect of any stage carriage shall discontinue the business in relation to such stage carriage, it shall be lawful for the proper officer or officers of excise, upon payment of all duty in arrear

due from the person to whom the licence was granted, to transfer such licence to any other person to whom the original holder thereof shall assign his interest therein; and the person to whom such licence shall be so transferred shall thereupon be liable to and chargeable with the payment of the duty which shall accrue or become payable under such licence, or in respect of the stage carriage to which the same shall relate, and shall also be liable to all other the provisions and regulations contained in any act relating to stage carriages in the same manner as if such last-mentioned person had duly obtained a licence in his own name for the keeping, using, and employing of such stage carriage: provided always, that the original holder of such licence shall indorse in writing upon the back thereof the name of the person to whom he assigns his interest therein, and shall sign his own name to such indorsement.

1. *Regulations as to Stage Carriages, Licences, and Duties.*

26 & 27 Vict. c. 33.  
ness during the currency of the licence.

## II. Regulations as to Duties on Horses Let for Hire.

By 6 & 7 Will. 4, c. 45, the collection and management of the duties in Great Britain on horses let for hire, and on licences relating to the same, were transferred to the commissioners of excise.

By 2 & 3 Will. 4, c. 120, s. 56, If any licensed postmaster shall die, or become bankrupt or insolvent, it shall be lawful for his executor or administrator, assignee or trustee, or for any other person succeeding to or taking possession of his inn, house, or other place, to let horses for hire in manner aforesaid until such person shall procure such licence as hereinbefore directed; and such person shall not be liable to the penalty imposed upon persons letting horses for hire without being licensed in that behalf, provided such licence be taken out within thirty days next after the death, bankruptcy, or insolvency of any such licensed postmaster; and such person shall be subject to the same rules, regulations, and charges, and shall be liable to account for and pay the duties hereby imposed, in like manner as such deceased or bankrupt or insolvent postmaster was subject and liable to.

On death, &c. of licensed postmaster, his representatives may act under his licence for thirty days.

Sect. 58. No licensed postmaster shall by virtue of any such licence be authorised to let any horse for hire at any inn, house, or place not specified in such licence, and that for and in respect of every inn, house, or other place at which any such postmaster shall let any horse for hire a separate and distinct licence shall be taken out by such postmaster under this act; and if any person shall let any horse for hire at any inn, house, or place not named or described in some such licence granted to him, he shall forfeit 20*l*.

No licensed postmaster to let horses at more than one place by virtue of one licence.

Sect. 59. Every licensed postmaster [see sect. 117, *post*, p. 679] shall cause his christian name and surname, together with the words "Licensed to let Horses for Hire," to be painted in legible characters of at least two inches in height, and of a proper and proportionate breadth, upon a sign or board either hung out from or fixed upon some conspicuous part of the front of the house, stables, or out-offices at every inn, house, or place at which such postmaster may be so licensed, in order to denote that such person is a letter of horses for hire at such inn, house, or place; and any licensed postmaster who shall let for hire any horse at any inn, house, or place without having such sign or board hung out or fixed as aforesaid shall forfeit 5*l*.

Licensed postmaster to have the words "Licensed to let horses for hire" painted on a sign or board.

Sect. 60. Where any licensed postmaster shall keep any carriages to be furnished at the same time with any horse or horses by him let for hire by the mile (except hearses and mourning coaches), such postmaster shall, before any such carriage shall be so furnished or used, cause all such carriages to be numbered with progressive

Carriages kept to be let with horses shall be numbered, and have name, &c. of postmaster painted thereon.

2. *Regulations as to Duties on Horses let for Hire.*

2 & 3 Will. 4,  
c. 120.

Penalty on postmaster for neglect, or for painting a false name, &c.

16 & 17 Vict. c. 88.  
Duties on horses let for hire and on licences to let horses repealed.

Grant of new duties on licences to let horses for hire.

Duties granted to be duties of excise under the care of the commissioners of inland revenue.

Persons who let horses for hire to take out licences under this act.

numbers, beginning with number one, and proceeding upwards to the highest number of carriages which such postmaster shall so keep, and shall also paint, in one or more straight line or lines on the outside panel of each door of every such carriage which shall have a door thereto, and on some conspicuous part outwardly on each side of every such carriage which shall not have a door thereto, the christian name and surname of such postmaster, and the name of the city, town, or place where such carriage shall be kept, in legible characters and figures of a colour different from and opposite to the colour of the ground whereon the same shall be painted, each letter to be at least one inch in height, and each figure to be at least one inch and a half in height, and each of a proportionate breadth; and such postmaster shall continue such letters and figures on every such carriage so long as such carriage shall be kept for the purpose aforesaid, varying the numbers on such carriages from time to time as occasion shall require, so as to make the same correspond with the actual number of such carriages which he shall then keep; and if any licensed postmaster shall neglect or omit to number or paint any such carriage in manner aforesaid, or shall paint or cause to be painted thereon any false or fictitious name or place of residence, or any higher number than the greatest number of such carriages which he shall then keep, or if any licensed postmaster shall keep two or more such carriages with the same number painted thereon, or shall continue any number upon any such carriage after he shall cease to keep any number of such carriages corresponding therewith, he shall forfeit 10*l*.

The 16 & 17 Vict. c. 88, s. 1, repeals the duties payable in Great Britain under 2 & 3 Will. 4, c. 120, or any other act or acts, for or in respect of horses let for hire, and on licences to let horses for hire, and all clauses, provisions, and regulations for levying, collecting, and securing the said duties, so far only as they relate to such duties.

By sect. 2, in lieu of the duties so repealed there were granted, for and in respect of every licence to be taken out yearly by every person who shall let any horse for hire with or without any carriage to be used therewith, other duties, since repealed also, and in lieu of them are imposed the duties in Schedule B. of 29 Vict. c. 36, for which see title "*Excise*."

Sect. 3. The said duties by this act granted shall be denominated and deemed to be duties of excise, and shall be under the care and management of the commissioners of inland revenue for the time being; and all powers, provisions, clauses, regulations, and directions, fines, forfeitures and penalties, contained in or enacted by any act or acts in force for securing the duties of excise or any of them, or otherwise in relation thereto, shall in all cases not herein expressly provided for, and so far as the same are not superseded or expressly repealed by and are consistent with the express provisions of this act, be duly observed, applied, practised, and put in execution for charging, raising, levying, collecting, and securing the said duties hereby granted, and otherwise relating thereto, as fully and effectually to all intents and purposes as if the same powers, provisions, clauses, regulations, directions, fines, forfeitures, and penalties were particularly repeated and re-enacted in the body of this act with reference to the said duties hereby granted.

Sect. 4. Every person who shall let any horse for hire, to be used either as a saddle horse or for drawing any carriage conveying any person, or for drawing any hearse, shall, before he shall let any such horse for hire, take out a proper licence for that purpose under this act, to be granted by the collector or other person having charge of the collection, and the supervisor of excise within the collection and district in which the persons requiring such licence shall reside or carry on the business of letting horses for hire, or by such other person or persons as the commissioners of inland revenue shall appoint

or authorise in that behalf, on payment of the duty chargeable on such licence.

Sect. 5. Provided always, that no person shall be required to take out any such licence as aforesaid in respect of any horse used in drawing any public stage carriage duly licensed by the commissioners of inland revenue, or their proper officer, or in respect of any horse used in drawing any hackney carriage duly licensed by the like authority, such hackney carriage being regularly and constantly used for the purpose of standing or plying for hire in the public streets or roads within the limits of the 16 & 17 Vict. c. 33, provided such hackney carriage shall be hired within and shall not be used to go beyond such limits.

Sect. 6. Every person applying for any such licence as aforesaid shall, before the same shall be granted to him, fill up and sign a printed form of requisition for such licence, to be provided by the commissioners of inland revenue for that purpose, and shall insert and set forth therein his full and true Christian name and surname and place of abode, and the place or places where he carries on or intends to carry on the business of letting horses for hire, and shall also specify and set forth in such form fully and truly the greatest number of horses and carriages respectively which such applicant has at any one time within the space of one year immediately preceding such application kept to be let for hire, and the duty on the licence to be granted on such requisition shall be charged according to the greatest number of such horses or carriages so kept, whichever may give the higher rate of duty: provided always, that it shall be lawful for any person applying for such licence as aforesaid to require a licence to be granted to authorise him to keep and let for hire at one time a greater number of horses and carriages respectively than the greatest number thereof which he so kept in the previous year, and in such case the duty chargeable under this act upon such licence shall be charged in respect of the number of horses or carriages which such licence shall authorise to be so kept; and it shall also be lawful for any person applying for such licence as aforesaid who shall not within the year preceding have kept any horses or carriages to be let for hire to specify, in the requisition for such licence, any number of horses and carriages intended to be kept by him to be let for hire, and to require a licence to be granted to authorise him to keep and let for hire such number of horses and carriages, and upon payment of the duty chargeable under this act in respect of such number of horses or carriages, such licence shall be granted to him accordingly.

Sect. 7. There shall be specified in every such licence to be granted under this act the true christian name and surname and place of abode of the person to whom the same shall be granted, the sum paid for such licence, and the greatest number of carriages and horses respectively which the same will authorise to be kept at one time to be let for hire, and the place or several places where such person shall carry on or intend to carry on the business of letting horses or carriages for hire.

Sect. 8 provides that every licence to let horses for hire granted under this act, at any time after the 6th day of April, 1854, shall expire on the 5th day of April next after the day of the granting thereof.

Sect. 9. Every person to whom any such licence as aforesaid shall be granted, and who shall be desirous of continuing the business of letting horses for hire after the expiration thereof, shall take out a fresh licence for that purpose for the following year, to expire on the day hereinbefore appointed in that behalf, and shall so renew the same from year to year so long as he shall desire to continue such business and shall pay the duty by this act charged on every such licence; and every such person shall give notice in writing twenty-one days at least

2. *Regulations as to Duties on Horses let for Hire.*

16 & 17 Vict. c. 83.  
Not to extend to horses used in licensed stage or hackney carriages.

Persons applying for licence to sign a requisition containing certain particulars.

Particulars to be specified in licences.

Commencement and expiration of licences

Renewal of licences.

2. *Regulations  
as to Duties on  
Horses let for  
Hire.*

16 & 17 Vict. c. 88.

Licences to persons commencing business to be granted on payment of a proportionate part of the duty according to the quarter in which they are taken out.

Persons before licence shall not be entitled to take out licence on payment of less than the annual duty unless their former licence expired at least one year previously.

Persons desirous of keeping to let for hire a greater number of horses or carriages than specified in licence may take out a supplemental licence.

Persons intending to let horses for hire to make entry of their stables and coach-houses.

before the expiration of the current licence to him granted of his intention to renew the same to the collector or supervisor or other person authorised to grant such licences for the district or place at which such business is intended to be carried on; and where such notice shall have been given, the new licence shall bear date on the day next after the day of the expiration of the former licence, but if such notice shall not have been given the licence shall bear date on the day of the application for the same.

Sect. 11. Provided also, that when any person shall be desirous of beginning to exercise the business of letting horses for hire at any time after the 6th day of April, 1854, such persons not having before taken out any licence in that behalf, it shall be lawful to grant such licence for the remainder of the current year ending on the 5th day of April next after the granting of such licence, upon payment of the full annual duty by this act imposed on such licence, or a proportionate part only of such duty, according to the directions hereinafter given in such case; (that is to say,) if such licence shall be taken out at any time within the quarter of a year ending on the 5th of July in any year, the same shall be granted upon payment of the whole of the said annual duty; and if such licence shall be taken out at any time within the quarter ending on the 10th of October in any year, the same shall be granted upon payment of three fourth parts only of the said annual duty; and if such licence shall be taken out at any time within the quarter ending on the 5th of January in any year, the same shall be granted upon payment of one half only of the said annual duty; and if such licence shall be taken out at any time within the quarter ending on the 5th of April in any year, the same shall be granted upon payment of one fourth part only of the said annual duty.

Sect. 12. Provided always, that no person who shall at any time have taken out, either under this or any former act, a licence to let horses for hire, and who shall after the expiration of such licence apply for a new licence to let horses for hire under this act, either on the same or on other or different premises from those on which he before carried on the business of letting horses for hire, shall be deemed to be a person beginning to exercise the said business within the meaning of this act so as to entitle him to take out such licence upon payment of a proportionate part only of the annual duty by this act thereon imposed, but every such person shall pay the whole of such annual duty, unless the period between the expiration of the former licence and the taking out of the new licence shall be at least a period of one year.

Sect. 13. Provided always, that if any person to whom any licence to let horses for hire shall have been granted under this act shall be desirous during the existence of such licence of keeping to let for hire any greater number of horses or carriages than such licence shall authorise him to keep for that purpose, it shall be lawful for him to apply for and require to be granted to him a supplemental licence to authorise him to keep and let for hire such additional number of horses or carriages, or both, as shall be specified in the requisition to be signed by him in that behalf, and such supplemental licence shall be granted accordingly on payment of such sum for the duty thereon as would be payable by a person then beginning the business of letting horses for hire for a licence to keep and let for hire the number of horses and carriages respectively specified in such supplemental licence for the remainder of the current year ending on the 5th of April next following.

Sect. 14. Before any such licence as aforesaid shall be granted to any person, and before any person shall let any horse for hire for any of the purposes mentioned in this act, such person shall make a true and particular entry in writing signed by him of every stable, coach-house, shed, or other building in which he shall keep or intend to

keep any horse or carriage to be let for hire, and shall deliver such entry to the proper officer of excise, and in default thereof such person shall forfeit for every unentered stable, coach-house, shed, or other building in which he shall keep any horse or carriage to be let for hire, or any horse or carriage which he shall let for hire, the sum of 100*l*.

Sect. 15. If any person shall let any horse for hire to be used for any of the purposes in this act mentioned, without having obtained a proper licence in that behalf, or if any person shall at any one time keep to be let for hire a greater number of horses or carriages than he shall by such licence be authorised to keep at one time to be let for hire, such person shall for every such offence forfeit the sum of 100*l*.

By 24 & 25 Vict. c. 91, s. 16, No penalty under sect. 15 of the 16 & 17 Vict. c. 88, shall be deemed to be incurred in respect of the letting for hire of any horse or carriage for the purpose of conveying a prisoner to or from any prison, and used under such letting solely for that purpose.

2. *Regulations as to Duties on Horses let for Hire.*

16 & 17 Vict. c. 88.

Penalty for letting horses for hire without licence or keeping a greater number of horses, &c., than licence authorises.

No penalty for letting for hire a horse or carriage to convey a prisoner to gaol.

### III. Proceedings to Recover Penalties.

By 16 & 17 Vict. c. 88, s. 16, it is enacted, That from and after the passing of this act it shall not be lawful for any person other than the solicitor or some other officer of the inland revenue, to inform or prosecute before any justice of the peace for the recovery of any penalty imposed by or incurred under any act or acts now in force, or this act with relation to horses let for hire or the duties thereon.

None but officers of inland revenue to prosecute before justices for penalties.

By 2 & 3 Will. 4, c. 120, s. 101, all duties granted or imposed by or incurred under this act may be sued for and recovered by all such ways and means and in such manner and form as are and is or at any time hereafter shall be provided by law for the recovery of any other duties granted or imposed by or incurred under any other act relating to stamp duties, as well as by the particular ways and means provided by this act; and in all actions, bills, complaints, informations, and proceedings to be commenced, prosecuted, entered, or filed in the name of his Majesty or of any other person for the recovery of any such duties, or of any debts or penalties which may be incurred or become payable under this act, it shall be lawful for his Majesty, or any other person legally entitled to sue or prosecute for the same, to have and recover such duties, debts, and penalties, with full costs of suit and all other reasonable charges and expenses.

2 & 3 Will. 4, c. 120.

Duties recoverable as other stamp duties.

Duties and penalties recoverable with costs.

Sect. 102. All pecuniary penalties imposed by or which may be incurred under this act may be sued or prosecuted for in any of his Majesty's courts of record at Westminster for any offence committed in England, Wales, or Berwick-upon-Tweed, and in his Majesty's Court of Exchequer in Scotland, for any offence committed in that part of Great Britain called Scotland, by action of debt, bill, plaint, or information, wherein no essoin, protection, or privilege, nor more than one imparlance, shall be allowed: Provided always, that it shall not be lawful for any person to sue or prosecute for any such penalty in any of the courts aforesaid without having first obtained the consent in writing of two or more of the commissioners of stamps for that purpose, unless the action, suit, or prosecution for such penalty shall be carried on by the solicitor of stamps in England or Scotland respectively; and it shall be lawful for the said commissioners, if they shall think fit, to order the proceedings to be stayed in any such action, suit, or prosecution on payment of part only of any penalty incurred, with or without costs, or on payment only of the costs incurred or any part thereof, or otherwise, as they shall judge proper and expedient.

In what courts pecuniary penalties may be sued for.

Consent of commissioners of stamps requisite to sue for penalties.

3. *Proceedings to recover Penalties.*

2 & 3 Will. 4,  
c. 120.

Penalties not exceeding 20*l.* recoverable before a justice.

Mode of proceeding.

Sect. 103. Provided always, that it shall be lawful for any justice of the peace having jurisdiction where the offence shall be committed, to hear and determine any offence against this act which may subject the offender to any pecuniary penalty not exceeding 20*l.*; and it shall be lawful for any such justice and he is hereby required, upon information given or complaint made before him, to summon the party accused, and also the witnesses on either side, to be and appear before the said justice or before any other justice of the peace at a time and place to be appointed for that purpose; and either on the appearance of the party accused, or in default thereof, it shall be lawful for such justice, or any other justice present at the time and place appointed for such appearance, to proceed to examine into the matter of fact, and upon due proof made thereof by voluntary confession of the party or by oath of one or more witness or witnesses, to give judgment for the penalty, and to award and issue out his warrant for the levying of any penalty so adjudged, together with the costs and expenses of such proceedings, and also the costs and expenses of such warrant, and of levying the same on the goods of the offender, and to cause sale to be made of such goods in case they shall not be redeemed within five days, rendering to the party the overplus, if any; and where goods of such offender cannot be found sufficient to answer the penalty and all such costs and expenses, it shall be lawful for such justice, and he is hereby required to commit such offender to the common gaol or house of correction, there to remain for such term or period of time as is by this act fixed or provided as the term of imprisonment for the particular offence of which such offender shall have been convicted; and in any case where no such term of imprisonment is or shall be so fixed or provided as aforesaid, then such justice is hereby required to commit such offender to the common gaol or house of correction, there to remain for any time not less than three calendar months, and not exceeding six calendar months, if the full penalty imposed by this act for the offence of which such offender shall have been convicted shall amount to the sum of 20*l.*, and for any time not less than one calendar month, and not exceeding three calendar months, if such penalty shall not amount to 20*l.*, unless such penalty and all such costs and expenses shall be sooner paid and satisfied; and if the person convicted shall find himself aggrieved by the judgment of any such justice, it shall be lawful for such person to appeal against the same to the justices of the peace at the general or quarter sessions of the peace for the county or place within which the offence shall be committed which shall be held next after the expiration of ten days from the day on which such conviction shall have been made, of which appeal notice in writing shall be given to the prosecutor or informer seven clear days previous to the first day of such sessions; and such justices at such sessions are hereby authorised to examine witnesses upon oath, and finally to hear and determine such appeal; and in case the judgment of any such justice shall be affirmed, it shall be lawful for the justices at such sessions to award and order the person appealing to pay such costs occasioned by such appeal as to them shall seem meet: provided always, that no person convicted before any such justice shall be entitled or permitted to appeal against such conviction in manner aforesaid unless, within five days next after such conviction made, he shall enter into a recognizance, with two sufficient sureties, before such justice, to enter and prosecute such appeal, and to pay the amount of the penalty and costs in which he shall have been convicted, and also to pay such further costs as shall be awarded in case such conviction shall be affirmed on the hearing of such appeal: provided also, that no such proceedings so to be had or taken shall be quashed or vacated for want of form, or shall be removed by *certiorari*, suspension, advocacy, or reduction, or by any other writ or process, into any superior or other

Appeal.

Proceedings not to be quashed for want of form, nor removed.

court or jurisdiction; any law or usage to the contrary notwithstanding.

Sect. 104. Provided always, that it shall not be lawful for any person other than the solicitor of stamps, or some other officer of his Majesty's stamp duties in England or Scotland respectively, to inform or prosecute before any justice of the peace for the recovery of any penalty imposed by or incurred under this act, except in the cases next hereinafter mentioned; (that is to say,) any penalty incurred by the driver of any stage carriage by reason of the carrying of a greater number of passengers in, upon, or about such stage carriage than is or shall be allowed by this act or by the licence relating to such stage carriage, and any penalty imposed or incurred by reason of the carrying of any outside passenger, or any luggage on the roof or top of any stage carriage, contrary in any manner to the directions of this act, or by reason of any person sitting or being carried on any luggage, or upon that part of the roof of any stage carriage allotted for luggage, or by reason of more than one person besides the driver sitting or being carried upon the box of any stage carriage, or of refusing to permit or allow any stage carriage or luggage to be measured or the passengers to be counted, or refusing or neglecting to stop such carriage at any toll gate for that purpose, or by reason of any other offence which may be subject to any penalty the driver or conductor or guard of any stage carriage, or any person employed to hold the horses, or having the care of or being employed in or about any stage carriage, or any toll-gate keeper, toll collector, constable, or peace officer, or by reason of any person summoned as a witness neglecting or refusing to attend or give evidence; and if any person, other than such solicitor or officer as aforesaid, shall commence or prosecute any information or complaint before any justice of the peace for the recovery of any penalty imposed by or incurred under this act, except in the several cases hereinbefore mentioned and allowed in that behalf, such information or complaint, and every proceeding thereupon had, shall be null and void to all intents and purposes: provided always, that nothing herein contained shall extend to permit or allow any person other than the solicitor, or some other officer of stamp duties, to inform or prosecute for the recovery of any penalty imposed by or incurred under this act by reason of the driver of any carriage or other person plying for passengers to be conveyed for hire by any carriage not having the proper numbered plates fixed thereon, unless the offender shall be apprehended and taken before a justice of the peace as authorised by this act.

Sect. 105. It shall be lawful for any justice of the peace, before whom any person shall be convicted of any offence against any of the provisions of this act, to mitigate as he shall see fit any penalty by this act imposed in cases where such justice shall see cause so to do, provided that all reasonable costs and charges expended or incurred in prosecuting for such offence shall be always allowed over and above the sum to which such penalty shall be mitigated, and so as such mitigation do not reduce the penalty to less than one-fourth of the penalty incurred, exclusive of such costs and charges; anything herein contained to the contrary notwithstanding.

Sect. 106. All pecuniary penalties imposed by or incurred under this act, which shall be sued or prosecuted for and recovered by or in the name of any person other than his Majesty's attorney general in England, or his Majesty's advocate for Scotland, or the solicitor of stamps, or any other officer of stamp duties in England or Scotland respectively, shall respectively be distributed and divided in manner following; (that is to say,) one moiety thereof to his Majesty, and the other moiety thereof, with full costs of suit, to the person who shall inform and sue or prosecute for the same within fourteen days after the offence shall have been committed; and all such pecuniary penalties

3. *Proceedings to recover Penalties.*

2 & 3 Will. 4, c. 120.

By whom penalties shall be recovered before a justice.

Justices may mitigate penalties.

Application of penalties.



3. *Proceedings to recover Penalties.*

2 & 3 Will. 4,  
c. 120.

Justices shall receive the crown's share of penalties, and pay same to clerk of peace, to be remitted to stamp office.

Penalty on justice or clerk of peace for neglecting to pay over the penalties received.

Justices empowered to award costs to defendants where informations or complaints are withdrawn or dismissed in certain cases.

as aforesaid which shall be sued or prosecuted for and recovered by or in the name of his Majesty's said attorney general in England or advocate in Scotland, or by or in the name of such solicitor or officer as aforesaid, or for the recovery of which any information or complaint shall be made, or any action or suit shall be commenced after the expiration of the time aforesaid, shall go and be applied to the use of his Majesty: provided always, that it shall be lawful for the commissioners of stamps, at their discretion, to give all or any part of such penalties or shares of penalties belonging to his Majesty as rewards to any person or persons who shall have detected such offences or given information which may have led to the discovery thereof, or to the conviction of the offenders.

Sect. 107. Every justice of the peace before whom any person shall be convicted of any offence against this act shall take and receive the penalty or share of the penalty belonging to his Majesty levied or paid under or by virtue of such conviction, and every such justice shall pay or cause to be paid all such sums of money which he shall so take or receive as aforesaid, at the next general or quarter sessions of the peace after he shall have so taken or received the same, into the hands of the clerk of the peace or other such officer of the county or place within which such conviction shall have been made, who shall, within ten days after his receipt thereof, and without fee or reward, pay or remit the same, for the use of his Majesty to the solicitor of stamps, at the stamp office in Westminster or Edinburgh, as the conviction shall happen to be in England or Scotland respectively, any thing in any other act contained to the contrary notwithstanding; and every such justice shall, within one week after every such payment made by him to any clerk of the peace or other such officer, transmit to such solicitor as aforesaid a schedule containing the name of the person so convicted, the nature of the offence, and the amount of the penalty of and in which he shall have been convicted, the date of such conviction, and the sum of money which shall have been paid under or by virtue thereof, together with the name of the clerk of the peace or other officer to whom he shall have paid the same; and if any such justice shall neglect or omit to pay or cause to be paid to such clerk of the peace or other officer as aforesaid, at the time and in the manner hereinbefore directed, any such penalty or share of penalty received by such justice as aforesaid, or upon payment thereof shall neglect or omit to transmit to the proper solicitor of stamps such schedule as aforesaid, or if any such clerk of the peace or other officer shall neglect or omit to pay or remit any such penalty or share of penalty to such solicitor of stamps as aforesaid, within the time and in manner hereinbefore limited and directed in that behalf, every person so offending shall forfeit 50*l*.

Sect. 108. If any proprietor of any stage carriage, or the driver or guard of any stage carriage, shall be summoned before any justice of the peace to answer any information or complaint exhibited or made against him by any person other than an officer of stamp duties, touching or concerning any offence committed or alleged to have been committed by such proprietor, driver, or guard respectively against the provisions of this act, and such information, or complaint shall afterwards be withdrawn or quashed or dismissed, or if the defendant shall be acquitted of the offence charged against him, it shall be lawful for such justice to order and award that the informer or person exhibiting or making such information or complaint shall pay to the defendant such costs of making or preparing for his defence, and also such compensation for his loss of time and for the time of his witnesses (if any) in attending such justice touching or concerning such information or complaint, as to such justice shall seem reasonable; and in default of immediate payment of the sum so awarded it shall be lawful for such justice to cause the same to be levied by distress and

sale of the goods and chattels of the person ordered to pay the same, together with the costs of such distress and sale; and if goods and chattels of such person sufficient to answer the sum so awarded, with such costs as aforesaid, cannot be found, it shall be lawful for such justice to commit such person to the common gaol or house of correction for any time not exceeding one calendar month, unless the sum so awarded, together with all costs and expenses, shall be sooner paid and satisfied.

Sect. 109. Any summons issued by any justice of the peace requiring any defendant or any witness or other person to appear before such justice, or any other justice, with reference to any information, complaint, or other proceeding for the recovery of any duty or penalty under this act, shall be deemed to be well and sufficiently served in case either the summons or a copy thereof, be served personally upon any such person as aforesaid, or be left at his usual or last place of residence, or, in case such person be a proprietor, driver, conductor, or guard of any stage carriage, be left with the book-keeper or person for the time being acting as book-keeper for such stage carriage in any town or place from, into, or through which such carriage shall go or be driven nearest to the place where any such offence shall be committed; and any notice by this act required to be given to the proprietor of any stage carriage or to any other person shall be deemed to be well and sufficiently served in case either such notice, or a copy thereof, be served personally upon such proprietor or other person, or be left at his usual or last place of residence, or (in the case of such proprietor) be left with any book-keeper or person acting as book-keeper at any office belonging to such proprietor.

Sect. 110. If any constable or other peace officer shall refuse or neglect to serve or execute any summons, warrant, or order granted, issued, or made by any justice of the peace, or by any two of the commissioners of stamps, pursuant to any of the provisions of this act, every such constable or peace officer so offending shall forfeit 10*l*.

Sect. 111. If any person who shall be summoned as a witness to give evidence before any justice of the peace or before any justice at sessions touching the matters alleged in or relating to any information, complaint, appeal, or other proceeding depending before such justice or justices for the recovery of any duty or penalty incurred under this act, shall neglect or refuse to appear before such justice or justices at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed by such justice or justices, or if any person so summoned shall appear, but shall refuse to be examined and give evidence before such justice or justices touching the matters aforesaid, every such person so offending shall forfeit 10*l*.

Sect. 112. Upon the trial or hearing of any information or complaint exhibited or made under any of the provisions of this act any officer of stamp duties, or other person employed by the commissioners of stamps, shall be deemed and is hereby declared to be a competent witness, notwithstanding that such officer or person may be the informant or complainant, or may be entitled to or expect any part of any pecuniary penalty or any remuneration or reward, on the conviction of any offender upon any such information or complaint.

Sect. 113. Every complaint, information, summons, conviction, warrant of distress, or commitment, or other such proceeding which shall be had or taken for the recovery of any duty or penalty under the provisions of this act, may be drawn or made out according to the several forms contained in schedule (B.) hereunto annexed, or to the effect thereof *mutatis mutandis*, as the case shall require; and every such complaint, information, summons, conviction, warrant, or other such proceeding which shall be so drawn or made out shall be good

3. *Proceedings to recover Penalties.*

2 & 3 Will. 4,  
c. 120.

Service of summonses and other notices.

Penalty on constables refusing to serve a summons, warrant, &c.

Penalty on witnesses neglecting to attend.

Officers of stamp duties not disqualified from being witnesses.

Proceedings to be drawn up according to forms in schedule (B.)

3. *Proceedings to recover Penalties.*

2 & 3 Will. 4, c. 120.

Carriages, horses, harness, &c., chargeable with the duties and penalties incurred.

Persons selling or disposing of such carriages, &c., after notice, to be liable to extent of value thereof.

In what manner goods distrained under this act shall be sold.

Limitations of actions.

Venue.

and effectual, to all intents and purposes whatsoever, without stating the case or the facts or evidence in any more particular manner than is required in and by such forms respectively.

Sect. 114. All the carriages, horses, and harness, and other articles and things, kept, used, or employed by any person, whether licensed under the authority of this act or not, for the purpose of conveying passengers for hire, or for the purpose of being let for hire as aforesaid shall be subject and liable to and chargeable with the duties in arrear and owing, or which shall become due and payable from time to time, from or by such person for or in respect of any stage carriage kept, used or employed by such person, or for or in respect of any horse let for hire by any such person, and to and with all penalties which may be imposed upon or incurred by such person under this act, and also to and with the costs and expenses of all proceedings which shall or may be had or taken for the recovery of such duties and penalties respectively; and all such carriages, horses, harness, and other articles and things shall, for the purpose of satisfying such duties, penalties, costs and expenses, or any part thereof respectively, be deemed to be the goods and chattels of such person, and shall be distrained or otherwise seized or taken accordingly, in or into whose custody or possession soever the same shall or may be or come, and by or under what right or title soever the same shall or may be held or claimed; and in case any person in or into whose custody or possession any such carriages, horses, harness, or other articles shall be or come, by or under any means or title whatsoever, shall convert the same to his own use, or shall sell or dispose thereof for the use or benefit of any other person, after notice given by the commissioners of stamps or their solicitor, or by any person authorised to collect or receive the duties by this act granted, or any of them, that such carriages, horses, harness, and other articles are subject and liable to or chargeable with any of the duties, penalties, costs, and expenses aforesaid, every person so converting or selling or disposing of such carriages, horses, harness, or other articles shall be accountable to his Majesty, to the extent of the value of such carriages, horses, harness, or other articles, for the amount of the duties, penalties, costs, and expenses to or with which such carriages, horses, harness, and other articles shall be subject, liable or chargeable, and the same may be sued for and recovered under and by virtue of this act as a debt due to his Majesty accordingly.

Sect. 115. In all cases where any goods or chattels distrained or otherwise seized or taken under any of the provisions of this act are directed to be sold, the same shall be sold by public auction, and notice of the time and place of such sale shall be given to the owner of such goods or chattels, or left at his last known place of abode, three days at least prior to such sale: Provided always, that if the owner of any such goods or chattels shall give his consent in writing to the sale thereof at an earlier period than is by this act or shall be by any such notice appointed for such sale, or in any other manner than is by this act directed, it shall be lawful to sell such goods or chattels according to such consent: Provided also, that if the owner of such goods or chattels shall at any time before the sale thereof pay or tender to the person who by any warrant or other process shall be directed or authorised to cause such goods or chattels to be sold the sum which he shall by such warrant or process be directed to levy or raise by the sale of such goods or chattels, together with all reasonable costs and expenses incurred, no sale of such goods or chattels shall be made.

Sect. 116. All actions and prosecutions which shall be brought or commenced against any person for anything done in pursuance or under the authority of this act shall be commenced and prosecuted within three calendar months next after the fact committed, and not

afterwards, and shall be brought and tried in the county or place where the cause of action shall arise, and not elsewhere; and notice in writing of such action and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and the defendant in such action may plead the general issue, and give this act, and any other matter or thing in evidence at any trial to be had thereupon; and if the cause of action shall appear to arise from any matter or thing done in pursuance and by the authority of this act, or if any such action shall be brought after the expiration of such three calendar months, or shall be brought in any other county or place than as aforesaid, or if notice of such action shall not have been given in manner aforesaid, or if tender of sufficient amends shall have been made before such action commenced, or if a sufficient sum of money shall have been paid into court after such action commenced by or on behalf of the defendant, the jury shall find a verdict for the defendant; and if a verdict shall pass for the defendant, or if the plaintiff shall become nonsuit, or shall discontinue any such action, or if on demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs of suit as between attorney and client, and shall have the like remedy for the same as any defendant may have for costs of suit in other cases at law; and although a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the judge before whom the trial shall be had shall at the time of such trial certify in writing his approbation of the action and of the verdict obtained thereupon.

Sect. 117. And in order to avoid the frequent use of divers terms and expressions in this act, and to prevent any misconstruction of the terms and expressions used therein, be it enacted, That wherever in this act, with reference to any person, matter, or thing, any word or words is or are used importing the singular number or the masculine gender only, yet such word or words shall be understood to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and that wherever the terms and expressions following occur in this act they shall be construed respectively in the manner hereinafter directed; (that is to say,) that the term and expression "his Majesty" shall be construed to mean and include his Majesty, his heirs, and successors; that the term "officer of stamp duties" shall be construed to mean any officer deputed or appointed by the commissioners of stamps, whatever may be his particular office or employment; that the term "proprietor," used with reference to any stage carriage, shall be construed to mean and include any and every person who shall keep, use, or employ such stage carriage, or who shall be concerned in the keeping, using, or employing thereof; that the term "licensed postmaster" shall be construed to mean and include any and every person, male or female, licensed to let horses for hire under the authority of this act; that the term "horse" or "horses" shall respectively be construed to mean and include any mare or gelding, or mares or geldings, as well as any horse or horses; that the term "toll gate" shall be construed to mean any gate or bar at which any toll is payable or any ticket is receivable for any horse or carriage; that the term "toll-gate keeper" shall be construed to mean and include the keeper of any such gate or bar as aforesaid, or the collector of tolls thereat, or any person acting as such keeper or collector respectively; that the term "driver" used with reference to any stage carriage shall be construed to mean the coachman, driver, or director thereof; and that the term "luggage" shall be construed to mean any trunk, box, bale, parcel, package, corn, or other article, whether

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2 & 3 Will. 4, c. 120.

Notice of action. General issue.

Tender of amends.

Construction of the terms used in this act.

"His Majesty."  
"Officer of stamp duties."

"Proprietor."

"Licensed postmaster."

"Horse," or "horses."

"Toll-gate."

"Toll-gate keeper."

"Driver."

"Luggage."

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Powers and provisions of other stamp acts in force to extend to this act.

such trunk, box, bale, parcel, package, corn, or other article shall or shall not belong to any passenger conveyed by any such stage carriage.

Sect. 118. All the powers, provisions, regulations, forfeitures, pains and penalties contained in or imposed by any other act or acts in force with relation to any of the duties under the management of the commissioners of stamps, so far as the same are or may be applicable in cases not by this act expressly provided for, and so far as the same shall not be superseded by and as the same shall be consistent with the express provisions of this act, shall be of full force and effect with respect to the duties by this act granted, and to the matters and things charged or chargeable therewith, and shall be applied and put in execution for securing and collecting the said last-mentioned duties, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually, to all intents and purposes, as if such powers, provisions, regulations, forfeitures, pains, and penalties had been repeated and specially enacted in this act with reference to the duties by this act granted and made payable.

SCHEDULE (B) of 2 & 3 Will. 4, c. 120.

*The Forms of Proceedings for the Recovery of Duties and Penalties under the 2 & 3 Will. 4, c. 120.*

Form of a warrant of distress for the recovery of stage carriage duties.

To A. B., of, &c.

Whereas a licence [or, licences] hath [or, have] been granted, under the provisions of the statute in that behalf made, to C. D., of, &c. to keep, use, and employ a stage carriage [or, stage carriages] with plates numbered respectively [here specify the number or numbers of the plates appertaining to the licence or licences granted to C.D.]: and whereas the said C. D. hath made default in payment of the sum of \_\_\_\_\_, for the duty which hath become due and payable to his Majesty in respect of such licence [or, licences] between the \_\_\_\_\_ day of \_\_\_\_\_, and the \_\_\_\_\_ day of \_\_\_\_\_, contrary to the statute in that case made and provided: therefore we \_\_\_\_\_, and \_\_\_\_\_, esquires, two of the commissioners of stamps, do hereby authorise and direct you to distrain the said C. D., by his goods and chattels, and also to seize and take all or any of the carriages, horses, harness and other things made subject and liable to the said duty by the statute in that behalf, and to levy thereon the said sum of \_\_\_\_\_, being the amount of such duty so due and payable as aforesaid; and if within the space of five days next after taking such distress the said sum of \_\_\_\_\_, together with the reasonable costs and charges of taking and keeping such distress, shall not be paid, then we do hereby order and direct that you shall sell and dispose of the said goods and chattels, carriages, horses, harness, and other things which shall be so distrained, seized and taken, and that you shall levy and raise thereout the said sum of \_\_\_\_\_, and all reasonable costs and charges of taking, keeping, and selling such distress, rendering the overplus (if any) to the owner of the said goods and chattels; and you are to certify to the commissioners of stamps what you shall have done by virtue of this our warrant. Given under our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_.

Form of an information for the recovery of a penalty under this act.

County [or, as the case may be] of \_\_\_\_\_ } Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of our Lord \_\_\_\_\_, at \_\_\_\_\_ of \_\_\_\_\_, to wit. } A. B. of, &c. [or, A B. an officer of stamp duties, or a collector or farmer of the duty on horses let for hire, as the case may be,] cometh before me, C. D., esquire, one of his Majesty's justices of the peace for the said \_\_\_\_\_ and informeth me, the said justice, that E. O. of \_\_\_\_\_, heretofore, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the said \_\_\_\_\_ did [here state the offence], contrary to the form of the statute in such case made and provided, whereby the said E. O. hath forfeited for the said offence the sum of \_\_\_\_\_.

Taken and received by me the day \_\_\_\_\_ }  
and year first above written. }

To E., O., of, &amp;c.

County [or, as the } Whereas an information hath been exhibited before me,  
 case may be,] of } C. D., esquire, one of his Majesty's justices of the peace  
 to wit. } for the of charging that you the above-named  
 E. O., on the day of , at , did [here state the subject of the  
 charge], whereby you have forfeited the sum of : these are therefore to  
 require you personally to be and appear before me, the said justice, or before  
 such other of his Majesty's justices of the peace for the said as shall be  
 then present at , on the day of , at the hour of , in the  
 noon of the same day, then and there to answer the same information and  
 to make your defence thereto, and if you fail to appear accordingly, such pro-  
 ceedings will be taken as if you had personally appeared, and had not made  
 any defence to the said charge.

Given under my hand and seal, this day of .

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 to recover Penalties.

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 c. 120.

Form of a sum-  
 mons on the  
 foregoing infor-  
 mation.

County [or, as the } Be it remembered, that on the day of , at ,  
 case may be,] of } C. D. of, &c. was duly convicted before me , one  
 to wit. } of his Majesty's justices of the peace for , in pur-  
 suance of an act passed in the third year of the reign of his present Majesty  
 king William the Fourth, intituled "An Act," &c. [title of this act], for that  
 the said C. D., on the day of , did [here state the offence as the  
 case may happen to be], contrary to the form of the statute in that case made  
 and provided; for which offence I do adjudge that the said C. D. hath forfeited  
 the sum of , and [if the justice mitigate the penalty] which sum of  
 I do hereby mitigate to the sum of over and above the sum of , for  
 the costs and charges of E. F., the informer, in prosecuting this conviction.  
 Given under my hand and seal, the day of .

Form of a convic-  
 tion on the fore-  
 going infor-  
 mation.

To the Constable of , in the of .

County [or as the } Whereas E. O., of, &c. has been duly convicted of a certain  
 case may be,] of } offence, for that [here state the offence as in the convic-  
 to wit. } tion], whereby he hath forfeited the sum of , [and,  
 in case of mitigation, which hath been mitigated to the sum of ], over and  
 above the reasonable costs and charges of the informer, allowed and assessed at  
 the sum of : therefore, I command you to levy the said sum of , and  
 also the said sum of for the costs and charges aforesaid, making together  
 the sum of , by distraining the goods and chattels of the said E. O., and by  
 seizing and taking all or any of the carriages, horses, harness, and other things  
 made subject and liable by the statute in that behalf to be seized and taken,  
 to satisfy the penalty, costs, and charges aforesaid; and if within the space of five  
 days next after such distress taken, the said sum of , together with the  
 reasonable costs and charges of taking and keeping such distress, shall not be  
 paid, then I order and direct that you shall sell and dispose of the said goods  
 and chattels which shall be so distrained, seized and taken as aforesaid, and shall  
 levy and raise thereout the said sum of and all reasonable costs and charges  
 of taking and keeping and selling such distress, rendering the overplus, if any,  
 to the owner of the said goods and chattels; and you are to certify to me what  
 you shall have done by virtue of this my warrant. Given under my hand and  
 seal, the day of .  
 (Signed)

Form of a war-  
 rant of dis-  
 tress founded on  
 the foregoing  
 conviction.

One of his Majesty's justices of the peace for  
 the said of .

To the Constable of , and to the Keeper of the Common Gaol [or,  
 House of Correction] at in the said  
 County [or as the } Whereas E. O., of, &c. has been duly convicted of a certain  
 case may be,] of } offence, for that [here state the offence as in the convic-  
 to wit. } tion], whereby he hath forfeited the sum of , [and,  
 in case of mitigation, which hath been mitigated to the sum of ], over and  
 above the reasonable costs and charges of the informer, allowed and assessed  
 at the sum of , making together the sum of : and whereas it has  
 been duly made to appear to me that no sufficient distress can be found whereon

Form of a war-  
 rant of commit-  
 ment for want of  
 a sufficient  
 distress, founded  
 on the foregoing  
 conviction.

3. *Proceedings to levy the said sum of ; therefore I command you, the constable of , to recover Penalties to apprehend and take the said E. O., and safely to convey him to the common gaol [or, house of correction] at in the of , and there to deliver him to the keeper thereof, together with this warrant: and I do hereby command you, the said keeper, to receive into your custody in the said gaol [or, house of correction] him, the said E. O., and him therein safely to keep for the space of , unless the said sum of shall be sooner paid.*  
*Given under my hand and seal, the day of .*  
*(Signed)*

*One of his Majesty's justices of the peace for the said of .*

## Stamps.

As to Stamps and Penalties on Cards, &c., see 25 Vict. c. 22. Title "Excise."

- I. *Commissioners of Stamps and Taxes*, 5 & 6 Will. 3, c. 21; 9 & 10 Will. 3, c. 25; 44 Geo. 3, c. 98; 4 & 5 Will. 4, c. 60; 5 & 6 Will. 4, c. 20, p. 683.
- II. *Power of Justices to enforce Penalties in respect of Stamp Duties*, 10 Anne, c. 19, p. 683.
- III. *Application of Penalties*, 26 Geo. 3, c. 82; 44 Geo. 3, c. 98, p. 684.
- IV. *Who may proceed for Penalties*, 44 Geo. 3, c. 98; 9 Geo. 4, c. 25; 9 Geo. 4, c. 49, p. 685.
- V. *Costs and Proceedings of Recovering Duties and Penalties*, 53 Geo. 3, c. 108; 7 & 8 Geo. 4, c. 55, p. 686.
- VI. *Regulations for Sale of Stamps and Preventing Fraud therein*, 3 & 4 Will. 4, c. 97, p. 687.
- VII. *Certain Documents made before Justices exempt from Stamps*, 6 & 7 Will. 3, c. 12; 55 Geo. 3, c. 184, p. 693.
- VIII. *Suppression of Sale of Unstamped Newspapers*, 6 & 7 Will. 4, c. 76, p. 693.
- IX. *Proceedings by Justices when Information for Offence against Inland Revenue Acts is exhibited against a Person in Prison*, 24 & 25 Vict. c. 91, p. 695.

Origin of stamp duties.

STAMP duties originally invented by the Dutch in the seventeenth century; then adopted by the French, and first imposed in England as a mere war tax, are now a branch of the perpetual revenue, and are a tax imposed upon all parchment and paper in which are contained legal proceedings, private instruments, and licences or patents. These imposts are very various(a), according to the nature of the thing

(a) The following is a list of the principal statutes relating to this branch of the law:—

[6 & 7 Will. 3, c. 12; 1 Anne, st. 2, c. 22; 8 Anne, c. 9; 10 Anne, c. 19; 5 Geo. 3, c. 46; 12 Geo. 3, c. 48; 23 Geo. 3, c. 58; 26 Geo. 3, c. 82; 31 Geo. 3, c. 25; 25 Geo. 3, c. 55; 36 Geo. 3, c. 52; 42 Geo. 3, c. 99; 43 Geo. 3, c. 126; 44 Geo. 3, c. 98; 52 Geo. 3, c. 38; 53 Geo. 3, c. 108; 55 Geo. 3, c. 184; 1 & 2

Geo. 4, c. 55; 3 Geo. 4, c. 117; 5 Geo. 4, c. 41; 9 Geo. 4, c. 27; 9 Geo. 4, c. 49; 3 & 4 Will. 4, c. 23, c. 97; 4 & 5 Will. 4, c. 60; 5 & 6 Will. 4, c. 20 and c. 64; 6 & 7 Will. 4, c. 28; *Ibid.* c. 66; *Ibid.* c. 76; 7 Will. 4, c. 112; 1 & 2 Vict. c. 35; *Ibid.* c. 85; 2 & 3 Vict. c. 52; 3 & 4 Vict. c. 73; *Ibid.* c. 110; 4 & 5 Vict. c. 34; 5 & 6 Vict. c. 79; 6 & 7 Vict. c. 72.]

stamped or taxed, rising gradually from 1*l*. to 10*l*., (and in many cases, such as legacies, administrations, conveyances, &c., to an amount proportioned to the property conveyed). (See Tomlins's Law Dictionary.)

It will be sufficient for the purposes of this work, to allude to the stamp laws in connection only with the jurisdiction and duties of justices of the peace.

With respect to evidence as regards stamps, see "*Evidence.*"

Several provisions relative to the penalties of the stamp acts will be found under the different titles of instruments which are subject to stamp duties.

## I. Commissioners of Stamps and Taxes.

For the management of the stamp duties, the crown may appoint commissioners, who shall substitute inferior officers. (See 5 & 6 Will. 3, c. 21, s. 7; 9 & 10 Will. 3, c. 25, s. 48; 44 Geo. 3, c. 98, s. 6.) Officers for the stamp duties.

By the 4 & 5 Will. 4, c. 60, s. 8, the commissioners of stamps and the commissioners for the affairs of taxes are consolidated into one board and are to be called "the commissioners of stamps and taxes."

Sect. 9. All the powers and authorities heretofore vested in the commissioners of stamps, and the commissioners for the affairs of taxes respectively, shall be had and exercised by the said commissioners.

Stat. 5 & 6 Will. 4, c. 20, s. 1, consolidates the offices of receiver-general of the stamp duties and of receiver-general of the land and assessed taxes.

Sect. 2 consolidates the offices of accountant and comptroller-general of the stamp duties and of comptroller of accounts of land and assessed taxes. See further, *post*, title, "*Taxes.*"

## II. Power of Justices to enforce Penalties in respect of Stamp Duties.

By the 10 Anne, c. 19, s. 172, it shall and may be lawful to and for any two or more of the justices of the peace for the time being, residing near to the place where any pecuniary forfeitures, not exceeding 20*l*., upon this or any of the acts of parliament, touching any of the duties under the management or care of the said commissioners for managing her Majesty's duties on stamped vellum, parchment, and paper, shall be incurred, or any offence against any of the same acts shall be committed, in any wise relating to the same duties, or any of them, by which any sum of money only may be forfeited, to hear and determine the same; which said justices of the peace are hereby authorised and required, upon any information exhibited, or complaint made in that behalf, within one year after seizure made, or such offence committed, to summon the party accused and also the witnesses on either side, and upon the appearance or contempt of the party accused,\* shall be convicted of the offence alleged against him, and to award and issue out warrants under their hands and seals, for levying any pecuniary penalties so adjudged, on the goods of the offender, and to cause sale to be made thereof, in case they shall not be redeemed within six days, rendering to the party the overplus, if any; and if any party shall find himself aggrieved, or remain unsatisfied in the judgment of the said justices, then he or they shall or may, by virtue of this act, complain or appeal to the justices of the peace at the next general quarter sessions for that county, riding, or place, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and

10 Anne, c. 19.  
Jurisdiction of justices where the penalty does not exceed 20*l*.

\* *Sic.*

Appeal.



*2. Power of  
Justices to en-  
force Penalties  
in respect of  
Stamp Duties.*

10 Anne, c. 19.  
Mitigation.

determine the same, and, in case of conviction, to issue warrants for levying penalties, as aforesaid."

Sect. 173. That it shall and may be lawful to and for the said respective justices, where they shall see cause, to mitigate or lessen any such penalties, as they in their discretion shall think fit, the reasonable costs and charges of the officers and informers as well in making the discovery as in the prosecution of the same, being always allowed over and above such mitigation, and so as such mitigation do not reduce the penalties to less than double the duties over and above the said costs and charges; any thing contained in this act or any other act of parliament to the contrary notwithstanding.

### III. Application of Penalties.

2 Geo. 3, c. 82.  
Application of  
Penalties.

By the 26 Geo. 3, c. 82, s. 1, it is enacted, that wheresoever any person shall be convicted before a justice or justices of the peace for any offence to be hereafter committed against any act or acts of parliament now in being, or hereafter to be made, touching or concerning any the duties under the management or care of the said commissioners for managing the duties on stamped vellum, parchment and paper, by which any pecuniary penalty or sum of money shall be forfeited, the said justice or justices of the peace before whom such person shall be convicted of the said offence, shall levy the said pecuniary penalty or sum of money in such manner as in such act or acts of parliament is contained, and apply the same to such uses and purposes, and in such proportions, as are therein contained and expressly directed, in case the same act or acts of parliament, or any other act or acts of parliament relating thereto, shall expressly direct the application thereof; and in default of such express and sufficient directions in such act or acts of parliament for the application of the said pecuniary penalty, or sum of money so forfeited upon such conviction as aforesaid, then to apply the same in such manner as is hereinafter directed.

Sect. 2. One moiety or half part of all pecuniary penalties or forfeitures which shall be incurred by any person or persons for any offence hereafter to be committed against any law now in being, or hereafter to be made, touching or concerning any the said duties (except where a different mode of application is or shall be in the said law specially prescribed), shall belong, and be applied to the informer or informers prosecuting for the same within the space of six calendar months after such offence is committed, and the other moiety or half part of the said pecuniary penalties or forfeitures (the necessary charges for the recovery thereof being first deducted) shall be paid to the use of his Majesty, his heirs, and successors, in the manner hereinafter directed.

Sect. 3. Every distribution or division of any pecuniary penalty or forfeiture, directed to be made by this or any other act or acts of parliament touching any of the said duties, upon conviction before a justice or justices of the peace as aforesaid, shall be, and is hereby restricted and confined to the prosecuting for the same within the time hereinbefore limited; and that, in default of such prosecution within the time aforesaid, no informer or informers before a justice or justices of the peace as aforesaid, shall have or be entitled to any part or share of such penalty or forfeiture, but that the whole thereof shall belong to his Majesty, his heirs, and successors, and shall be recoverable by any the ways and means in or by any such act or acts of parliament in that behalf directed; anything in this, or any of the said acts, contained to the contrary notwithstanding.

Sect. 5. From and after the passing of this act, in all cases where

any pecuniary penalty or forfeiture for any offence committed against this, or any act or acts of parliament now or hereafter to be made, touching any the duties under the management or care of the said commissioners for managing the duties on stamped vellum, parchment and paper, shall be incurred, it shall and may be lawful for the justice or justices of the peace, before whom any person or persons shall be convicted of the said offence, to cause the conviction upon the same offence to be made out in the form or to the effect following, *mutatis mutandis*, as the case shall happen to be; anything in any former act contained to the contrary thereof notwithstanding; and every such conviction shall be good and effectual to all intents and purposes whatsoever, without stating the case, or the facts, or evidence, in any more particular manner; that is to say:

*Be it remembered, that on the*                      *day of*                      *in the*                      *A. O., of*                      *Form of con-*  
*was duly convicted before me, J. P., one of his Majesty's justices of the*                      *viction.*  
*peace for the county of*                      *[or, before us, J. P. and E. F., two of his Majesty's*  
*justices of the peace for the county of, as the case shall happen to be], in pursu-*  
*ance of an act passed in the*                      *year of the reign of*                      *for that the said*  
*A. O., on the*                      *day of*                      *now last past, did [here state the offence against*  
*the act, as the case shall happen to be], contrary to the form of the statute in*  
*that case made and provided; and I [or, we, as the case may be] do declare and*  
*adjudge that he, the said A. O., hath forfeited, for his said offence, the sum of*  
*of lawful money of Great Britain, which sum of*                      *I [or, we, as the*  
*case may be] do hereby mitigate to the sum of*                      *[here state the mitigated*  
*penalty, if necessary], to be distributed as the law directs. This is the first,*  
*[second, or other offence, as the case shall happen to be]. Given under my hand*  
*and seal [or, our hands and seals, as the case may require], this*                      *day of*                      *..*

Which conviction the said justice shall cause to be wrote fairly upon parchment, and returned to the next general quarter sessions of the peace for the county, riding, shire, stewartry, or place, where such conviction was made, to be filed by the clerk of the peace, and there to remain and be kept among the records of the same county, riding, shire, stewartry or place; and no such conviction shall be removed by *certiorari*, into any court whatsoever, but shall be subject to appeal before the justices of the quarter sessions, in such manner as in and by any such act or acts of parliament is specially directed. Appeal against the conviction.

By the 44 Geo. 3, c. 98, s. 27, all fines imposed by this act, except where otherwise expressly directed, shall be sued for, recovered, levied, or mitigated, as any fine by any laws in force on or before the 10th day of October, 1804, for securing stamp duties, or by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, or in the court of exchequer in Scotland respectively; and after this act all fines, heretofore imposed by any act relating to the duties on vellum, &c., or this act, shall go to the use of the king: Provided, that the commissioners aforesaid may, in every case in which any part of such fine was by any such act given to any informer, give any proportion thereof as they shall deem expedient, to any person who may inform for or discover any offence, in respect of which any such fine may be discovered, or assist in the recovery thereof.

Recovery and application of penalties.

#### IV. Who may proceed for Penalties.

The 44 Geo. 3, c. 98, s. 10, enacts, That it shall not be lawful for any person to commence, prosecute, enter, or file any action, bill, plaint, or information, in any of his Majesty's courts, or before any justice of the peace or other magistrate whatsoever, against any person, for the recovery of any fine, penalty, or forfeiture, made or incurred by virtue of this or any other act relating to his Majesty's stamp duties,

44 Geo. 3, c. 98.  
 Actions for penalties to be in name of attorney-general, &c., or some officer of the stamp duties.

#### 3. Application of Penalties.

26 Geo. 3, c. 82.

4. *Who may proceed for Penalties.*

44 Geo. 3, c. 98.

9 Geo. 4, c. 25.

9 Geo. 4, c. 49.

Justices may quash informations laid by any other person than an officer of stamps, on payment of costs.

unless the same be commenced, prosecuted, entered, or filed in the name of his Majesty's attorney-general, or his Majesty's advocate for Scotland, as the case may be, in England or Scotland respectively, or in the name of the solicitor or some other officer of his Majesty's stamp duties in England or Scotland respectively. (See *Smith v. Gillett*, 4 Nev. & M. 225; 2 Ad. & E. 361.)

The 9 Geo. 4, c. 25, s. 1, enacts, That whenever any person has been or shall be appointed solicitor or attorney on behalf of his Majesty, under the orders and directions of the commissioners of the treasury, customs, excise, or stamps, or under the order and directions of any commissioners or other persons or person having the management of any other branch of his Majesty's revenue, for the time being, it shall and may be lawful for such person to act and practise as such solicitor or attorney, under such orders and directions, in all and every court and courts, jurisdiction and jurisdictions, place and places, in any and every part of the United Kingdom (a).

The 9 Geo. 4, c. 49, s. 18, enacts, that from and after the passing of this act, in all cases where any information shall have been laid or shall be laid before any justice or justices of the peace in Great Britain, by any person other than the solicitor of stamps in England or Scotland, or some officer of the stamp duties, for the recovery of any fine, penalty, or forfeiture made or incurred by virtue of any act or acts relating to any duties under the management of the commissioners of stamps, it shall be lawful for the person or persons against whom such information shall have been or shall be laid to apply to the justice or justices of the peace before whom the information shall have been laid, or to the justices of the peace at the general quarter-sessions to which any appeal shall have been or shall be duly made from any conviction obtained or made on any such information, or laid by any person other than as aforesaid, to quash such information or conviction upon payment by the defendant of such costs and charges as to such justice or justices shall seem reasonable; and it shall be lawful for such justice or justices, if they shall think fit so to do, and such justice or justices are hereby authorised and empowered, upon such application, to quash such information or conviction accordingly.

## V. Costs and Proceedings of Recovering Duties and Penalties.

53 Geo. 3, c. 108.

Full costs to be recovered.

Stay of proceedings.

Where to be tried.

By the 53 Geo. 3, c. 108, s. 23, in all actions, informations, proceedings, &c. in the name of his Majesty, or in the name of any person on his behalf for the recovery of any duties, debts or penalties granted or imposed by any stamp act now in force, or this act, such duties, &c. shall be recovered with full costs.

By sect. 24, the commissioners of stamps may stay proceedings in any prosecution commenced by their direction for the recovering any penalty, on payment of part only of such penalty, with or without costs, or on payment of the costs only or part thereof, as such commissioners may judge fit, and they may give such sums as shall be so paid by way of penalty to the person informing of the offences.

By sect. 28, all criminal offences against any of the stamp acts, shall be tried in the county or city, or town and county where committed, or where the offenders are apprehended.

(a) And, accordingly, a suggestion that the defendant defends by *C. D.* who has been appointed solicitor on behalf of his Majesty, and acts as such in his behalf, is a sufficient

disclosure to the court that *C. D.* has authority to act under the above statute. (*West v. Taunton*, 6 Bing. 404; 4 Moore & P. 79, S. C.)

By 7 & 8 Geo. 4, c. 55, s. 7, whenever in any proceeding by action of debt, bill, plaint or information in any of his Majesty's superior courts of record in any part of the United Kingdom, or by civil bill in any court of any recorder, chairman, or assistant barrister in Ireland, or by information or complaint before any *justice or justices of the peace*, in any part of the United Kingdom, for the recovery of any stamp duty or duties, or part of any stamp duty or duties remaining due and unpaid, or for the recovery of any fine, penalty, or forfeiture incurred under or by virtue of any act or acts in force relating to any duties under the management of the commissioners of stamps, any statement, allegation or averment shall be made, that any act, matter or thing had been or was done, or that any proceeding had been or was taken, or that any licence, warrant, instrument, or authority was granted, or signed; or that any notice was signed by the commissioners of stamps, or by any subordinate officer of stamps, or by any person or persons, under and in pursuance of any act or acts in anywise relating to any duties under the management of the commissioners of stamps; or that any act, matter, or thing had been or was done, or that any proceeding whatsoever had been or was taken by any such subordinate officer of stamps, or by any other person or persons, under and in obedience to the orders and directions of the commissioners of stamps, or that any proceeding for the recovery of any penalty or forfeiture was commenced, prosecuted, entered or filed by or by the order of any officer or person thereto authorised by law: every and any such statement, allegation or averment shall be and shall be deemed and taken to be sufficient evidence of any and every fact so stated, alleged and averred, without any other or further evidence of any such fact, unless by other evidence the contrary shall be made to appear, any law, custom or usage to the contrary thereof in anywise notwithstanding.

5. *Costs and Proceedings of recovering Duties and Penalties.*

7 & 8 Geo. 4, c. 55. Averment of certain proceedings relating to stamps to be sufficient evidence of the fact that such proceedings were taken.

## VI. Regulations for Sale of Stamps and Preventing Fraud therein.

By 3 & 4 Will. 4, c. 97, "An Act to prevent the selling and uttering of forged Stamps, and to exempt from Stamp Duty artificial Mineral Waters in Great Britain, and to allow a Drawback on the Exportation of Gold and Silver Plate manufactured in Ireland," reciting that the laws in force in Great Britain had been found insufficient to prevent the selling and uttering of forged stamps on vellum, parchment, and paper, and that it was expedient to make further enactments in that behalf, it is enacted, that from and after the commencement of this act it shall be lawful for the commissioners of stamps, by writing under the hands of any two or more of them, to grant a licence free of expense to any person whom they in their discretion shall think fit and proper for the purpose (not being a distributor of stamps appointed by the said commissioners, nor a sub-distributor appointed by any such distributor) to vend and deal in stamps at any place or places in Great Britain to be named in such licence: Provided always, that every person to whom any such licence shall be granted shall enter into a bond to his Majesty, his heirs and successors, in a penal sum of 100*l.*, conditioned that such licensed person shall not sell or offer for sale or exchange, or keep or have in his possession for the purpose of sale or exchange, any stamp or stamps other than such as he shall have purchased or procured at the head office for stamps in Westminster or Edinburgh, or from some distributor of stamps duly appointed by the said commissioners, or from some person licensed to deal in stamps under the authority of this act: Provided always, that such bond shall not be liable to any stamp duty, and that one licence and one bond only shall be required for any number

3 & 4 Will. 4, c. 97.

Commissioners of stamps may license persons to deal in stamps.

Persons licensed to give bond.

Condition thereof.

Bond not liable to stamp duty.

*6. Regulations for Sale of Stamps and preventing Fraud therein.*

3 & 4 Will. 4, c. 97.  
Licence may be revoked.

Particulars to be specified in licences.

Commissioners of stamps empowered to grant warrants to search and inspect the stocks of stamps of distributors and licensed dealers.

Power of entry.

Penalty for refusing to aid in the execution of such warrants, or assaulting persons employed in the execution thereof, 50*l*.

Persons knowingly having forged dies or stamps in their possession ;

of persons in copartnership; and provided also, that it shall be lawful for the said commissioners, whenever they shall think fit, by notice in writing signed by any two or more of them, to revoke and make void any such licence as aforesaid.

Sect. 2. In every such licence to vend or deal in stamps there shall be truly specified the proper christian name and surname and place of abode of the person to whom the same shall be granted, and a true description of the house or shop or houses or shops in or at which he shall by such licence be authorised to vend or deal in stamps; and such person shall not be thereby authorised or entitled to vend or deal in stamps in or at any other house, shop, or place than such as shall be so specified and described in such licence.

Sect. 9. Upon information given to the commissioners of stamps upon the oath of one or more credible person or persons (which oath the said commissioners, or any one or more of them, or any justice of the peace, are and is hereby empowered to administer) that there is reasonable cause to suspect that any such distributor or sub-distributor as aforesaid, or person licensed or who shall have been licensed under the authority of this act, hath in his possession any forged or counterfeit stamp or stamps, it shall be lawful for the said commissioners, or any three or more of them, by warrant under their hands, to authorise any officer or officers of stamp duties, and such officer or officers is and are hereby fully authorised accordingly, with the assistance, if required, of any constable or other peace officer, to enter between the hours of nine in the morning and seven in the evening into the dwelling-house, room, shop, warehouse, outhouse, or other building, of or belonging to any distributor or sub-distributor of stamps, or of or belonging to any person licensed, or who at any time within six calendar months then last past shall have been licensed as aforesaid, to vend or deal in stamps; and if, on demand of admittance and notice of such warrant, the door of any such dwelling-house, room, shop, warehouse, outhouse, or other building, or any inner door thereof, shall not be opened, then to break open the same respectively, and to search for and to seize and take into his and their possession all such stamped vellum, parchment, or paper as shall be in any such place as aforesaid, or elsewhere in the custody or possession of such distributor or sub-distributor, or person licensed or having been licensed as aforesaid; and all constables and other peace officers are hereby required, upon the request of any person or persons acting under such warrant, to aid and assist him or them in the execution thereof; and if any constable or other peace officer shall, upon any such request as aforesaid, refuse or neglect to be aiding and assisting in the execution of any such warrant as aforesaid, or if any person shall refuse to permit any such search or seizure as aforesaid to be made, or shall assault, oppose, molest, or obstruct any person employed or acting in the execution or under the authority of any such warrant, or aiding or assisting in the execution thereof, every such constable, peace officer, or other person so offending in any of the cases aforesaid, shall forfeit 50*l*.

Sect. 12. If any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or instrument, resembling or intended to resemble, either wholly or in part, any die, plate, or other instrument which at any time whatever hath been or shall or may be provided, made, or used, by or under the direction of the commissioners of stamps, for the purpose of expressing or denoting any stamp duty whatever; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any vellum, parchment, or paper having thereon the impression of any such false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or other

instrument as aforesaid, or having thereon any false, forged, or counterfeit stamp, mark, or impression, resembling, or representing, either wholly or in part, or intended or liable to pass or be mistaken for, the stamp, mark, or impression of any such die, plate, or other instrument which hath been or shall or may be so provided, made, or used as aforesaid, knowing such false, forged, or counterfeit stamp, mark, or impression to be false, forged, or counterfeit: or if any person shall fraudulently use, join, fix or place for, with, or upon any vellum, parchment, or paper any stamp, mark, or impression which shall have been cut, torn, or gotten off or removed from any other vellum, parchment, or paper; or if any person shall fraudulently erase, cut, scrape, discharge, or get out of or from any stamped vellum, parchment or paper any name, sum, date, or other matter or thing thereon written, printed, or expressed, with intent to use any stamp or mark then impressed, or being upon such vellum, parchment, or paper, or that the same may be used for any deed, instrument, matter, or thing in respect whereof any stamp duty is or shall or may be or become payable; or if any person shall knowingly use, utter, sell, or expose to sale, or shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any stamped vellum, parchment, or paper from or off or out of which any such name, sum, date, or other matter or thing as aforesaid shall have been fraudulently erased, cut, scraped, discharged, or gotten as aforesaid; then, and in every such case every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person in committing any such offence, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the court, to be sentenced to penal servitude for life (20 & 21 Viet. c. 3), or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years.

Sect. 13. On any information given before any justice of the peace upon the oath of one or more credible person or persons (which oath such justice is hereby empowered to administer) that there is just cause to suspect any person of being or having been in any way engaged or concerned in making any false or counterfeit die, plate, or other instrument, or unlawfully marking or impressing any stamp, mark, or impression on any vellum, parchment, or paper with any such die, plate, or instrument; or in the unlawful possession of any forged or counterfeit die, plate, or instrument, or of any vellum, parchment, or paper with any counterfeit stamp, mark, or impression thereon; or in unlawfully or fraudulently, or without due authority, marking or impressing any lawful stamp on any vellum, parchment, or paper, or in causing or procuring the same to be so marked or impressed, or in aiding, abetting, or assisting in so marking or impressing the same; or in the unlawful possession of any vellum, parchment, or paper, or other material, unlawfully or fraudulently or without due authority stamped or marked, contrary to any of the provisions or regulations contained in any act relating to stamp duties; or of being or having been in any way engaged or concerned in the fraudulent erasing, cutting, scraping, discharging, or getting out of or from or off any stamped vellum, parchment, or paper any matter or thing thereon written, printed, or expressed; or in the unlawful possession of any stamped vellum, parchment, or paper from or off or out of which any matter or thing shall have been fraudulently erased, cut, scraped, discharged, or gotten as aforesaid, then and in every or any of the said cases it shall be lawful for such justice by warrant under his hand to cause any and every dwelling-house, room, workshop, out-house, or other building, yard, garden, or other place belonging to such suspected person, or where any such person shall be suspected of being or of having been in any way engaged or concerned in the

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or fraudulently affixing stamps, &c.;

or erasing names, dates, &c., with intent to use the stamps again;

or knowingly using any stamped vellum, &c., from which any name, date, &c., shall have been fraudulently erased;

guilty of felony.

Houses of persons suspected of being concerned in the forging of dies or stamps, or in the commission of other felonious acts may be searched.

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commission of any such offence as aforesaid, or of secreting any such die, plate, or instrument, or any such vellum, parchment, or paper, or any of the machinery, implements, or utensils necessary or applicable to the commission of any such offence as aforesaid, to be searched for any such stamped vellum, parchment, or paper, and for any such die, plate, or instrument, machinery, implement, or utensil, or other matter or thing as aforesaid; and if any of the said several matters and things shall be found in any place so searched, or in the custody or possession of any person whatsoever not having the same by some lawful authority, it shall be lawful for the person finding any such matters or things to seize the same respectively, and to carry the same forthwith to the justice by whom such warrant shall be granted, or to any other justice of the peace having jurisdiction where the same shall be seized, who shall cause the same to be secured and produced in evidence against any person who shall or may be prosecuted in any court of justice for any of the offences aforesaid; and afterwards the said matters and things so seized, whether produced in evidence or not, shall, by order of the court or judge before whom such offender shall be tried, or by order of some justice of the peace in case there shall be no such trial, be delivered over to the commissioners of stamps, to be defaced or destroyed, or otherwise disposed of, as the said commissioners shall think fit.

Penalty on persons hawking stamps, 20l.

Hawkers of stamps may be apprehended, and taken before a justice of the peace.

Sect. 14. If any person, whether he shall be licensed to vend or deal in stamps or not, shall hawk or carry about for sale or exchange any stamped vellum, parchment, or paper, or if any person shall utter or offer for sale or exchange, at any house, shop, or place other than the house or shop in which he shall reside or *bonâ fide* carry on his trade or business, any such stamped vellum, parchment, or paper, every such person shall forfeit the sum of 20l., over and above any penalty to which he may be liable for vending or dealing in stamps without being licensed so to do; and it shall moreover be lawful for any person, without any other warrant than this act, for that purpose to apprehend any person so hawking, carrying about, uttering, or offering for sale or exchange such stamped vellum, parchment, or paper, and to take him, or cause him to be taken before any justice of the peace having jurisdiction where the offence shall be committed, who shall hear and determine the matter; and if the offender shall not immediately on his conviction, pay the said penalty, such justice shall commit him to prison for any period of time not less than one nor more than three calendar months, unless such penalty shall be sooner paid or satisfied; and all stamped vellum, parchment, and paper which shall be found in the possession of such offender shall be forfeited to his Majesty, and shall be taken possession of by such justice, and be delivered over to the commissioners of stamps, to be disposed of in any manner as they shall think fit: Provided always, that if such offender shall not be apprehended and proceeded against in the manner hereinbefore directed, then the said penalty of 20l. shall be recoverable by any other of the ways and means provided for the recovery of penalties incurred under this act.

Justices may issue warrants for seizing stamps suspected to be stolen or fraudulently obtained.

Sect. 15. And for the better preventing and detecting of felonies and frauds in relation to stamped vellum, parchment or paper, be it enacted, That it shall be lawful for any justice of the peace having jurisdiction where any stamped vellum, parchment, or paper shall be or be supposed to be concealed or deposited, upon any reasonable suspicion that such stamped vellum, parchment, or paper has been stolen or fraudulently obtained, to issue his warrant for the seizing and detaining of such stamped vellum, parchment, and paper, and for apprehending and bringing before such justice or any other justice within the same jurisdiction the person in whose possession or custody such stamped vellum, parchment, or paper shall be found, to be dealt with according to law; and if such person shall omit or refuse to

account for the possession of such stamped vellum, parchment, or paper, or shall be unable satisfactorily to account for the possession thereof, or it shall not appear that the same was or were purchased by him at the head office for stamps in Westminster or Edinburgh, or from some distributor or sub-distributor of stamps, or some vendor of stamps duly licensed under the authority of this act, then and in every such case, such stamped vellum, parchment, and paper, or such part thereof of which no account or no satisfactory account shall be given, or which shall not appear to have been purchased at either of the said head offices, or from some distributor or sub-distributor of stamps or licensed vendor as aforesaid, shall be forfeited to his Majesty, and shall be accordingly condemned by such justice, and thereupon the same shall be delivered over to the commissioners of stamps, who shall keep the same for the space of six calendar months, and afterwards cancel and destroy the same, or dispose thereof for the use of his Majesty's revenue, as they shall think fit: Provided always, that if at any time within six calendar months next after such condemnation any person shall make out to the satisfaction of such justice that the vellum, parchment, or paper so forfeited, or any part thereof, was or were stolen or otherwise fraudulently obtained from him, and it shall also appear that the same was or were purchased by him at either of the said head offices, or from some distributor or sub-distributor or licensed vendor of stamps as aforesaid, it shall be lawful for such person to have the same, or such part thereof as shall be so proved to have been stolen or fraudulently obtained from him, delivered up to him, on producing a certificate under the hand and seal of such justice that the right of such person therein hath been duly proved: Provided also, that no such certificate shall be given unless notice in writing under the hand of such justice shall be given to the solicitor of stamps seven clear days at the least previously to the day of hearing any claim, in respect of such stamped vellum, parchment, or paper, of the time and place appointed for such hearing.

Sect. 23. All pecuniary penalties imposed by or incurred under this act may be recovered in any of his Majesty's courts of record at Westminster, for any offence in England, Wales, or Berwick-upon-Tweed, and in his Majesty's court of exchequer in Scotland for any offence in Scotland, by action, &c.: Provided, that it shall be lawful for the commissioners of stamps to mitigate or compound any such penalty, or to stay proceedings in any action, suit, or prosecution commenced for the recovery thereof, on such terms as the said commissioners shall judge proper and expedient, and also at their discretion to give all or any part of any sum paid by way of penalty or compromise to the person informing them of the offence in respect of which such sum shall be paid.

Sect. 24. Provided always, That it shall be lawful for any justice of the peace having jurisdiction where the offence shall be committed to hear and determine any offence against this act which may subject the offender to any pecuniary penalty, and it shall be lawful for any justice, and he is hereby required, upon information given or complaint made before him by the solicitor, or any other officer of his Majesty's stamp duties in England or Scotland, to summon the party accused, and also the witnesses on either side, to be and appear before the said justice or before any other justice of the peace at a time and place to be appointed for that purpose, and either on the appearance of the party accused or in default thereof it shall be lawful for such justice, or any other justice present at the time and place appointed for such appearance, to proceed to examine into the matter of fact, and upon due proof made thereof by voluntary confession of the party, or by oath of one or more witness or witnesses, to give judgment for the penalty, and to award and issue out his warrant for the levying of any penalty so adjudged, together with the costs and

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Penalties recoverable in the superior courts.

Commissioners may mitigate penalties, &c.

Any justice of the peace may determine offences subject to penalties upon information by solicitor or officer of stamp duties. Mode of proceeding.



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Appeal.

Proceedings not to be quashed for want of form, or removed.

Justices may mitigate penalties.

Limitation of actions.

Venue.

Notice of action.

General issue.

expenses of such proceedings, and also the costs and expenses of such warrant, and of executing the same on the goods of the offender, and to cause sale to be made of such goods in case they shall not be redeemed within five days, rendering to the party the overplus, if any; and where the goods of such offender cannot be found sufficient to answer the penalty and all such costs and expenses, it shall be lawful for such justice and he is hereby required to commit such offender to the common gaol or house of correction, there to remain for any time not less than three calendar months and not exceeding six calendar months, unless such penalty and all such costs and expenses shall be sooner paid and satisfied; and if the person convicted shall find himself aggrieved by the judgment of any such justice, it shall be lawful for such person to appeal against the same to the justices of the peace at the general or quarter sessions of the peace for the county or place within which the offence shall be committed which shall be held next after the expiration of ten days from the day on which such conviction shall have been made, of which appeal notice in writing shall be given to the prosecutor or informer, seven clear days previous to the first day of such sessions; and such justices at such sessions are hereby authorised to examine witnesses upon oath, and finally to hear and determine such appeal; and in case the judgment of any such justice shall be affirmed, it shall be lawful for the justices at such sessions to award and order the person appealing to pay such costs occasioned by such appeal as to them shall seem meet: Provided always, that no person convicted before any such justice shall be entitled or permitted to appeal against such conviction in manner aforesaid, unless within three days next after such conviction made he shall enter into a recognizance with two sufficient sureties before such justice to enter and prosecute such appeal, and to pay the amount of the penalty and costs in which he shall have been convicted, and also to pay such further costs as shall be awarded in case such conviction shall be affirmed on the hearing of such appeal: Provided also, that no such proceedings so to be had or taken shall be quashed or vacated for want of form, or shall be removed by *certiorari*, suspension, advocacy, or reduction, or by any other writ or process, into any superior or other court or jurisdiction; any law or usage to the contrary notwithstanding.

Sect. 25. It shall be lawful for any justice of the peace before whom any person shall be convicted of any offence against the provisions of this act which may subject the offender to any pecuniary penalty to mitigate such penalty as he shall see fit; provided that all reasonable costs and charges expended or incurred in prosecuting for such offence shall be always allowed over and above the sum to which such penalty shall be mitigated, and so as such mitigation do not reduce the penalty to less than one-fourth of the penalty incurred, exclusive of such costs and charges; anything herein contained to the contrary notwithstanding.

Sect. 26. All actions and prosecutions which shall be brought or commenced against any person for anything done in pursuance or under the authority of this act shall be commenced and prosecuted within three calendar months next after the fact committed, and not afterwards, and shall be brought and tried in the county or place where the cause of action shall arise, and not elsewhere; and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action; and the defendant in such action may plead the general issue, and give this act and any other matter or thing in evidence at any trial to be had thereupon; and if the cause of action shall appear to arise from any matter or thing done in pursuance and by the authority of this act, or if any such action shall be brought after the expiration of such three calendar months, or shall be brought in any other county or place than as aforesaid, or if notice of such action shall

not have been given in manner aforesaid, or if tender of sufficient amends shall have been made before such action commenced, or if a sufficient sum of money shall have been paid into court after such action commenced by or on behalf of the defendant, the jury shall find a verdict for the defendant; and if a verdict shall pass for the defendant, or if the plaintiff shall become nonsuit, or shall discontinue any such action, or if, on demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs of suit as between attorney and client, and shall have the like remedy for the same as any defendant may have for costs of suit in other cases at law; and although a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be had shall at the time of such trial certify in writing his approbation of the action and of the verdict obtained thereupon.

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Tender of amends.

Costs.

## VII. Certain Documents made before Justices exempt from Stamps.

By the 6 & 7 Will. 3, c. 12, s. 2, any warrant made by, or recognition taken before any justice or justices of the peace, is declared to be exempted from stamp duties. See also the 44 Geo. 3, c. 98, schedule (A.).

6 & 7 Will. 3, c. 12.

Documents exempted from stamps.

The 55 Geo. 3, c. 184, exempts (see schedule, title "*Affidavit*") from all stamp duties, affidavits required or authorised by law to be made before any justice or justices of the peace.

55 Geo. 3, c. 184.

Affidavits before justices, free from duty.

## VIII. Suppression of Sale of Unstamped Newspapers.

The 6 & 7 Will. 4, c. 76, s. 22, enacts, That upon information given before any justice of the peace upon the oath of one or more credible person or persons, (which oath such justice is hereby empowered and required to administer,) that there is reasonable and probable cause to suspect any person of being or having been at any time within one calendar month last preceding in any way knowingly and wilfully engaged or concerned in printing, publishing, vending, or otherwise distributing any newspaper not duly stamped as required by law, or of being unlawfully possessed of any newspapers not duly stamped as aforesaid, or that any printing press, engine, machine, types or other implements or utensils for printing is or are or have been by any person knowingly and wilfully used within the time last aforesaid for the purpose of composing or printing any newspaper not duly stamped as aforesaid, or that any such newspapers are sold or distributed, or kept for sale or distribution, or are unlawfully deposited in any place, then and in every such case it shall be lawful for such justice, and he is hereby required, upon the application of any officer of stamp duties, to grant a warrant under his hand, directed to any constable or other peace officer, or any officer of stamp duties, or other person or persons named in such warrant, authorising and empowering him or them, with such other person or persons as he or they shall call to his or their assistance, to enter and search in the daytime, any house, room, shop, warehouse, outhouse, building, or other place belonging to such suspected person, or where such person shall be suspected of being engaged or concerned or of having been engaged or concerned in the commission of any such illegal act as aforesaid, or where any such printing press, engine, machine, types, implements, or utensils suspected to be or to have been used for any such illegal purpose as aforesaid shall be or be

6 & 7 Will. 4, c. 76.

Justices may grant warrants to search for unstamped newspapers, and to seize presses, &c., used in printing same (a).

(a) See the 18 & 19 Vict. c. 27, exempting and regulating newspapers in respect of stamps.

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6 & 7 Will. 4, c. 76.

suspected to be, or where any such newspapers as aforesaid are suspected to be sold or distributed, or kept or deposited as aforesaid: and if upon any such search as aforesaid any newspapers not duly stamped as aforesaid, or any printing press, engine, machine, types, implements, or utensils which shall have been used in printing or publishing any such newspaper as aforesaid within the time last aforesaid, shall be found, it shall be lawful for the person or persons named in such warrant, and his or their assistant or assistants, to seize and take away the same, together with all other presses, engines, machines, types, implements, utensils, and materials for printing belonging to the same person, or which shall be found in the same house, room, shop, warehouse, outhouse, building or place; and all such presses, engines, machines, types, implements, utensils and materials, shall be forfeited to the use of his Majesty, and shall be proceeded against to condemnation in his Majesty's court of exchequer in England, Scotland or Ireland respectively, in like manner as in the case of any goods seized, as forfeited for any breach of the laws relating to his Majesty's revenues of customs or excise.

Mode of proceeding for recovery of penalties before justices.

Sect. 28. It shall be lawful for any justice of the peace within whose jurisdiction any offence, the penalty for which shall not exceed 20*l*. shall be committed against this act, and such justice is hereby required, upon any information exhibited or complaint made by any person duly authorised in that behalf (a) to summon the party accused, and also the witnesses on either side to be and appear before the said justice or before any other justice of the peace, at a time and place to be appointed for that purpose, and whether the party accused shall appear or not, it shall be lawful for the said justice or any other justice at the time and place appointed for such appearance to proceed to examine into the fact, and upon due proof made thereof to the satisfaction of any such justice, either by confession of the party accused, or by the oath of one or more credible witness or witnesses, to convict such offender, and to give judgment for the penalty and costs to be assessed by any such justice, and to issue his warrant for levying such penalty and costs, and also the reasonable costs and charges attending the distress on the goods of such offender, and to cause sale to be made thereof, in case the same shall not be redeemed within five days, rendering to the party the overplus, if any; and where goods sufficient cannot be found to answer such penalty and costs, such justice, or any other justice of the district or place in which such conviction shall take place, shall commit such offender to the common gaol or house of correction, there to remain for any time not exceeding three calendar months nor less than one calendar month, unless such penalty, costs and charges shall be sooner paid and satisfied; and if any person shall find himself aggrieved by the judgment of any such justice, it shall be lawful for such person to appeal against the same to the justices at the next general or quarter sessions of the peace for the district or place where the offence shall have been committed, which shall be held next after the expiration of ten days from the day on which such conviction shall have been made, of which appeal notice in writing shall be given to the prosecutor or informer seven clear days previous to the first day of such sessions, and it shall be lawful for such justices at such sessions to examine witnesses on oath, and finally to hear and determine such appeal: and in case any conviction of such justice shall be affirmed, it shall be lawful for the justices at such sessions to award and order the person convicted to

Appeal to sessions.

Notice of appeals.

Sessions may give costs.

(a) See sect. 27. The attorney or solicitor-general, solicitor of stamps and taxes, or "any person authorised to sue or prosecute for the same,

by writing under the hands of the commissioners of stamps and taxes," &c.

pay such costs occasioned by such appeal as to them shall seem meet : Provided always that no person convicted before any such justice, shall be entitled or permitted to appeal against such conviction in manner aforesaid, unless within three days after such conviction made he shall enter into a recognisance, with two sufficient sureties, before such justice, to enter and prosecute such appeal, and to pay the amount of the penalty and costs in which he shall have been convicted, and also such further costs as shall be awarded in case such conviction shall be affirmed on such appeal : Provided also, that no such proceedings so to be taken as aforesaid shall be quashed or vacated for want of form, or shall be removed by *certiorari*, suspension, advocacy, or reduction, or by any other writ or process whatsoever, into any superior or other court or jurisdiction in any part of the United Kingdom, any law, statute or usage to the contrary notwithstanding ; and provided also, that it shall be lawful for any justice of the peace before whom any person shall be convicted of any offence against this act, to mitigate as he shall see fit, any pecuniary penalty by this act imposed in cases where such justice shall see cause so to do : Provided that all reasonable costs and charges incurred as well in discovering as in prosecuting for such offence shall be always allowed, over and above the sum to which such penalty shall be mitigated ; and provided that such mitigation do not reduce the penalty to less than one-fourth of the penalty incurred, exclusive of such costs and charges, anything herein contained to the contrary notwithstanding.

Sect. 29. That the justice before whom any person shall be convicted of any offence under this act shall cause the conviction to be made out in the manner and form following, or in any other form of words to the like effect *mutatis mutandis* ; (that is to say : )

County of } Be it remembered, that on the      day of      , in the year of  
 ——— } our Lord      , at      , A. B., of      , was duly convicted  
 to wit. } before me, C. D., esq., one of his Majesty's justices of the peace for  
 the county of      , in pursuance of an act passed in the seventh year of the  
 reign of King William the Fourth, intituled [title of this act], for that the  
 said A. B. [here state the offence], contrary to the form of the statute in that  
 case made and provided, for which offence I do adjudge that the said A. B.  
 hath forfeited the sum of      , and [if the justice mitigate the penalty]  
 which sum of      I do hereby mitigate to the sum of      over and above  
 the sum of      , which I do allow to E. F., for his reasonable costs and ex-  
 penses in prosecuting this conviction.

Given under my hand and seal, this      day of      .

## IX. Proceedings by Justices when Information for Offence against Inland Revenue Acts is exhibited against a Person in Prison.

By 24 & 25 Vict. c. 91, it is enacted, sect. 46, that where any person against whom an information shall be exhibited before a justice of the peace for any offence committed by such person against any act relating to the inland revenue shall be in prison on any account whatever at the time appointed for the hearing of such information, the commissioners of inland revenue shall cause to be obtained and issued out of the court of exchequer in England, Scotland, or Ireland, as the case may require, a writ of habeas corpus directed to the governor or keeper of the prison in which such person shall be confined, commanding him to convey such person to the place of hearing to be specified in such writ, in order that the said person may answer the said information and attend the trial thereof ; and such writ of habeas corpus shall be issued out of either of the said courts, on application made by any one of the solicitors of inland revenue in England,

8. *Suppression of Sale of Unstamped Newspapers.*

6 & 7 Will. 4, c. 76.  
 Persons convicted to give security on appeal.

No *certiorari*.

Justices may mitigate penalties.

Form of conviction.

24 & 25 Vict. c. 91.  
 Persons in prison against whom informations are exhibited for offences against the inland revenue to be brought up by habeas corpus at the hearing of such informations.

9. *Proceedings by Justices, &c.*

24 & 25 Vict. c. 91.

Scotland, or Ireland, on behalf of the said commissioners, to any baron or judge of any of the superior courts of law in England, Scotland, and Ireland respectively: and it shall be lawful for the justices or magistrate before whom any such information shall be brought for adjudication to refuse to proceed with the said information in the absence of the person charged, when satisfactory proof shall be made that such person is confined in prison.

## Statutes, and (herein of) Customs.

Preliminary observations.

IT is said by the elegant and able writer of the *Commentaries*, (vol. i. p. 57,) that the municipal law of England, or the rule of civil conduct prescribed to the inhabitants of this kingdom, may, with sufficient propriety, be divided into two kinds: the *lex non scripta*, the unwritten or *common law*, and the *lex scripta*, the written or *statute law*.

Common law.

COMMON LAW.]—The *lex non scripta*, or unwritten law, includes not only *general customs*, or the *common law*, properly so called, but also the particular customs of certain parts of the kingdom, and likewise those *particular laws* that are by custom observed only in certain courts and jurisdictions. It is not to be supposed, however, that this *lex non scripta*, or common law, is not evidenced by written documents: for a considerable portion of it is so. (See 1 *Bla. Com.* 57, 58.)

Three kinds of.

This unwritten or common law is distinguishable into three kinds:

1. *General Customs*, which are the universal rule of the *whole kingdom*, and form the common law, in its stricter and more usual signification.
2. *Particular Customs*, which, for the most part, affect only the inhabitants of particular districts.
3. *Certain particular Laws*, which by custom are adopted and used by some particular courts of petty, general, and exclusive jurisdiction. (1 *Bla. Com.* 67.)

(1.) Common law or general customs.

1st. *As to general Customs, or the Common Law, properly so called.*]—This is that law by which proceedings and determinations in the king's ordinary courts of justice are guided and directed. Amongst other things, *Blackstone* observes, that this, for the most part, settles the solemnities and obligations of contracts; the rules of expounding wills, deeds, and acts of parliament; the respective remedies of civil injuries; the several species of temporal offences, with the manner and degree of punishment: and an infinite number of minuter particulars, which diffuse themselves as extensively as the ordinary distribution of common justice requires. Thus, for example, amongst other things, that there shall be four superior courts of record—the Chancery, the King's Bench, the Common Pleas, and the Exchequer; that a deed is of no validity unless sealed and delivered; that breaking the peace is an offence, and punishable by fine and imprisonment, &c.

These customs and maxims are to be known, and their validity is to be determined, by the judges in the several courts of justice. They are the repositories of the law—the living oracles who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land. (1 *Bla. Com.* 69.)

The common law is as absolute as parliamentary law, and must be as rigidly observed.

(2.) Particular customs.

2nd. *As to Particular Customs, or Laws which affect only the Inhabitants of Particular Districts.*]—These are the remains of that multi-

tude of local customs, out of which the common law, as it now stands, was collected at first by King Alfred, and afterwards by King Edgar and Edward the Confessor; each district mutually sacrificing some of its own special usages, in order that the whole kingdom might enjoy the benefit of one uniform and universal system of laws. But, for reasons that have been now long forgotten, particular counties, cities, towns, manors, and lordships, were very early indulged with the privilege of abiding by their own customs, in contradistinction to the rest of the nation at large; which privilege is confirmed to them by several acts of parliament. (*Mag. Cart.* 9 Hen. 3, c. 9; 1 Edw. 3, st. 2, c. 9; 14 Edw. 3, st. 1, c. 1; 2 Hen. 4, c. 1; 1 *Bla. Com.* 74.)

Such is the custom of gavelkind in Kent, and some other parts of the kingdom. Such is the custom that prevails in divers ancient boroughs, and therefore called borough English, that the youngest son shall inherit the estate, in preference to all his elder brothers, &c. Such, also, are the special and particular customs of manors, of which every one has more or less, and which bind all the copyhold and customary tenants that hold of the said manors. Such, likewise, is the custom of holding divers inferior courts, with power of trying causes, in cities and trading towns, the right of holding which, when no royal grant can be shown, depends entirely upon immemorial and established usage. Such, lastly, are many particular customs within the city of London, with regard to trade, apprentices, widows, orphans, and a variety of other matters. All these are contrary to the general law of the land, and are good only by special usage; though the customs of London are also confirmed by act of parliament. (*City of London's case*, 8 Rep. 126; *R. v. Bagshaw*, Cro. Car. 347.)

To this head may most properly be referred a particular system of customs used only among one set of the king's subjects, called the custom of merchants, or *lex mercatoria*; which, however different from the general rules of the common law, is yet ingrafted into it, and made a part of it, (*Winch.* 24,) being allowed, for the benefit of trade, to be of the utmost validity in all commercial transactions: for it is a maxim of law, that "*cuiuslibet in sua arte credendum est.*" (See *Vallejo v. Wheeler*, *Lofft*, 631; *Edin v. East India Company*, 1 *W. Bla.* 299; 2 *Burr.* 1216.)

The rules relating to particular customs regard either the proof of their existence, their *legality* when proved, or their usual method of allowance.

If the custom be not a good custom, it ought to be no longer used; What requisite to "*malus usus abolendus est*" is an established maxim of the law. To make a particular custom good, the following are necessary requisites:

1. That it have been used so long, that the memory of man runneth not to the contrary. So that, if any one can show the beginning of it, it is no good custom. Beyond memory.

For which reason, no custom can prevail against an express act of parliament; since the statute itself is a proof of a time when such a custom did not exist. (*Co. Lit.* 114.) A custom that every pound of butter sold in a certain market should weigh eighteen ounces, is bad, because it is directly contrary to the 13 & 14 Car. 2, c. 26, which directs that every pound throughout the kingdom shall contain sixteen ounces. (*Noble v. Durell*, see 3 *T. R.* 271.) (a). In which case, it seemed to be the opinion of the judges, that a custom to sell lumps of butter, containing eighteen or any other stated number of ounces,

(a) Query whether a custom to demise by parol an incorporeal hereditament (for instance, a right of common) can be supported at law.

(*Lathbury v. Arnold*, 1 *Bingh.* 219; 8 *Moore*, 72, *S. C.*; and see *R. v. Lane*, 1 *D. & Ry.* 76; 5 *B. & Ald.* 488, *S. C.*)

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might be good and valid. The inconvenience arises from that which is everywhere called a pound being different in amount of weight in different parts of the kingdom, by which fraud and deception may be readily practised. Therefore, where a contract is made to sell specified goods by quantities of weight or measure, this must mean *statute weight or measure*. (See *Hockin v. Cooke*, 4 T. R. 314; *Master, &c., of St. Cross v. Lord Howard de Walden*, 6 T. R. 338; *Moller v. Living*, 4 Taim. 102; *Law v. Hodson*, 11 East, 300.)

Where a parish contained within itself a borough not co-extensive with it, and the mayor of the borough, on a return to a mandamus for allowing a poor rate made by the churchwardens and overseers of the whole parish, stated a custom which had existed since the 43 Eliz. c. 2, of appointing separate churchwardens and overseers, and of making separate rates for the borough, and for those parts of the parish which lay without the borough; it was holden that such custom was invalid, and the return was quashed accordingly. (*R. v. Gordon*, 1 B. & Ald. 524.)

What is time  
immemorial.

The memory of man is taken in law to run to the beginning of the reign of Richard 1; consequently, if it can be shown that the custom commenced at any time since, or did not exist before, that period, it is invalid. But a regular usage for twenty years, unexplained and uncontradicted, is sufficient to warrant a jury in finding an immemorial custom. (*R. v. Jolliffe*, 2 B. & C. 54; 3 D. & R. 240, S. C.; *Bealey v. Shaw*, 6 East, 214; 2 Saund. 175, a. d.)

Prescription act,  
2 & 3 Will. 4, c. 71.

The statute of 2 & 3 Will. 4, c. 71, shortens the time of *prescription* in certain cases.

By sect. 1, claims to the right of common and other profits *à prendre*, are not to be defeated after *thirty* years' enjoyment, by showing the commencement; and after *sixty* years' enjoyment, the right is to be deemed absolute, unless had by consent or agreement.—By sect. 2, in claims of right of way or other easement, the periods are to be twenty years and forty years.—By sect. 3, a claim to the use of light enjoyed for twenty years shall be indefeasible, unless shown to have been by consent.—By sect. 4, the before-mentioned periods are to be deemed those next before suits for the claims to which such periods relate.—By sect. 5, in actions on the case, the claimant may allege his right generally as at present. In pleas of trespass and other pleadings, where the party used to allege his claim from time immemorial, the period mentioned in this statute may be alleged, and the exceptions or other matters may be replied specially.—Sect. 6 restrains the presumption to be allowed in support of claims thereinbefore provided for.—Sect. 7 contains a proviso as to infants and others.—Sect. 8 contains a proviso as to certain time being included in computing the term of forty years, appointed by the act.

Must have been  
uninterrupted.

2. *It must have been continued.* Any interruption would cause a temporary ceasing: the revival gives it a new beginning, which will be within time of memory, and thereupon the custom will be void. But this must be understood with regard to an interruption of the *right*; for an interruption of the *possession* only, for ten or twenty years, will not destroy the custom. (*Co. Lit.* 114.) As, if the inhabitants of a parish have a customary right of watering their cattle at a certain pool, the custom is not destroyed though they do not use it for ten years; it only becomes more difficult to prove; but if the *right* be any how discontinued for a day, the custom is quite at an end.

Immemorial ac-  
quiescence neces-  
sary.

3. *It must have been peaceable, and acquiesced in*; not subject to contention and dispute. (*Id.*) For, as customs owe their original to common consent, their being immemorially disputed, either at law or otherwise, is a proof that such consent was wanting. (1 Bla. Com. 77.)

4. *Customs must be reasonable*, (*Lit. s. 212*; *Taylor v. Devey*, 7 A. & E. 409,) or, rather, taken negatively, they must not be unreasonable. Which is not always, as Sir Edward Coke says, (1 *Inst.* 62,) to be understood of every unlearned man's reason, but of artificial and legal reason, warranted by authority of law. Upon which account, a custom may be good, though the particular reason of it cannot be assigned; for it sufficeth if no good legal reason can be assigned against it. Thus, a custom in a parish that no man shall put his beasts into the common till the third of October would be good; and yet it would be hard to show the reason why that day in particular is fixed upon, rather than the day before or after. But a custom that no cattle shall be put in till the lord of the manor has first put in his, is unreasonable, and therefore bad; for, peradventure, the lord will never put in his, and then the tenants will lose all their profits. (*Co. Copyhold*, s. 33.)

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Must not be un-  
reasonable.

A custom that tenants, whether by parol or deed, shall have the away going crop after the expiration of their terms, is good. (*Wigglesworth v. Dallison*, 1 *Doug.* 201; and see 1 *Bligh*. 287.)

So is a custom that a tenant may leave his away going crop in the barn, &c., after he has quitted the premises. (*Beavan v. Delahay*, 1 *H. Bla.* 5; *Lewis v. Harris*, *Id.* 7 n.)

A custom "that all the inhabitants of a manor shall grind all their corn, grain, and malt, which by them or any of them shall be used or spent on the ground within a manor, at a certain mill," is good. (*Cort v. Birkbeck*, 1 *Dougl.* 218.)

A custom "that all the tenants, resiants, and inhabitants, within a manor, should grind at the lord's mill all their corn and grain, as well growing within the manor as brought from other places, and spent or consumed in a ground state in their respective houses, within the manor," may be a good custom; but it does not extend to restrain the inhabitants who do not grow corn or grain, or who have no corn and grain of their own, from buying or using in such houses ground corn or flour, though it may not have been ground or grown within the manor, but produced from corn ground at other mills. (*Richardson v. Walker*, 4 *D. & R.* 498; 2 *B. & C.* 827, *S. C.*)

And where by the custom of a manor, all the tenants, resiants, and inhabitants, within the manor, were bound to grind all their corn, grain, and malt, as well growing within the manor, as brought from other places, and which after the grinding thereof should be spent or consumed in a ground state in their houses, at two ancient mills belonging to the lord, or one of them at their own option, and the lord having pulled down one of the mills so as to deprive the tenants of their option, it was held that the custom was suspended. (*Richardson v. Capes*, 4 *D. & R.* 512; 2 *B. & C.* 841, *S. C.*)

In an action upon the case upon a custom for not grinding at plaintiff's mills, plaintiff may declare generally upon a custom for a certain toll without specifying the particular toll, or the consideration for it, or that it is a reasonable toll, and a continuance of uniform payment and acquiescence is evidence of its reasonableness, and the court shall judge, under all the circumstances, what is reasonable. (*Gard v. Callard*, 6 *M. & Sel.* 69.)

A custom by which the town crier has an exclusive privilege of ringing a bell at all sales by auction within the town is good. (*Jones v. Waters*, 1 *Crom. M. & R.* 713; 1 *Gale*, *Rep.* 5, *S. C.*)

A custom is void which is unreasonable, uncertain, savours too much of arbitrary power, and tends to make a lord of a manor a judge in his own cause. (*Wilkes v. Broadbent*, 1 *Wils.* 63.)

A custom to take profits in *alieno solo* is bad; (*Blewitt v. Tregonning*, 3 *A. & E.* 554;) but a custom to an easement in *alieno solo* may be good. (*Fitch v. Rawlings*, 2 *H. Bla.* 393; *Pain v. Patrick*, 3 *Mod.* 293.)



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Observations.*

A custom for the stanners of Devonshire to divert water from streams into their mines, and for that purpose to dig trenches over other people's lands is void. (*Bastard v. Smith*, 2 *M. & Rob.* 129.)

It is no objection to a custom that it is not conformable to the common law of the land. (*Horton v. Beckman*, 6 *T. R.* 760, 764; and see *Hardy v. Holliday*, 4 *T. R.* 718, *n.*) But the usage of a particular place cannot vary the general law. (*R. v. Saltern, Cald.* 444.)

## Or uncertain.

5. *Customs ought to be certain.* A custom, that lands shall descend to the most worthy of the owner's blood, is void; for how shall this worth be determined? But a custom to descend to the next male of the blood, exclusive of females, is certain, and therefore good. (*Roll. Abr.* 565.)

A custom to pay 2*d.* an acre in lieu of tithes, is good; but to pay sometimes 2*d.* and sometimes 3*d.*, as the occupier of the land pleases, is bad for its uncertainty. Yet a custom to pay a year's improved value for a fine on a copyhold estate, is good; though the value is a thing uncertain: for the value may at any time be ascertained; and the maxim of law is, *id certum est quod certum reddi potest.* (*Id.*)

A custom, that poor housekeepers shall carry away rotten wood in a chase is bad, being too vague and uncertain. (*Selby v. Robinson*, 2 *T. R.* 758.)

So is a custom for the inhabitants of a parish to take from a private close which adjoins the sea, sand drifted there, for manure. (*Blewitt v. Tregonning*, 3 *A. & E.* 554; 5 *Nev. & M.* 234, 308.)

A right to glean in the harvest cannot be claimed at common law; neither have the poor of a parish legally settled as such any such right within the parish. (*Steel v. Houghton*, 1 *Hen. Bla.* 51, 52. See, ante, "Gleaning.")

So is a custom for every inhabitant of an ancient messuage within a parish to take a profit *à prendre* in the land of an individual bad. But such a right may be enjoyed by prescription or grant. (*Grinstead v. Marlowe*, 4 *T. R.* 717, 718; *Fitch v. Rawlings*, 2 *Hen. Bla.* 393; *Weekly v. Wildman*, 1 *Ld. Raym.* 407; 1 *Saun.* 341, *n.* 3; 346, *n.* 3.)

A custom for all the inhabitants of a parish to play "at all kinds of lawful games, sports, and pastimes in the close of A. at all seasonable times of the year, at their free will and pleasure," is good; but a similar custom "for all persons for the time being, being in the said parish," is bad. (*Fitch v. Rawlings*, 2 *H. Bla.* 393.)

A custom may be to do a thing several ways, if not inconsistent. (*Anon., Lofft*, 398.)

## Must be compulsory.

6. *Customs, though established by consent must be (when established) compulsory;* and not left to the option of every man, whether he will use them or no. Therefore, a custom, that all the inhabitants shall be rated toward the maintenance of a bridge, will be good; but a custom, that every man is to contribute thereto at his own pleasure, is idle and absurd, and indeed no custom at all.

## And consistent with each other.

7. *Lastly, customs must be consistent with each other:* one custom cannot be set up in opposition to another; for, if both are really customs, then both are of equal antiquity, and both established by mutual consent: which to say of contradictory customs is absurd. Therefore, if one man prescribes that by custom he has a right to have windows looking into another's garden, the other cannot claim a right by custom to stop up or obstruct those windows; for these two contradictory customs cannot both be good, nor both stand together. He ought rather to deny the existence of the former custom. (*Aldred's case*, 9 *Rep.* 58; 1 *Bla. Com.* 78.)

## Must be construed strictly.

Next, as to the allowance of special customs. Customs in derogation of the common law must be construed strictly. Thus, by the custom

of gavelkind, an infant of fifteen years may, by one species of conveyance (called a deed of feoffment), convey away his lands in fee simple, or for ever. Yet this custom does not empower him to use any other conveyance, or even to lease them for seven years; for the custom must be strictly pursued. (*Co. Cop. s. 33.*) However, if there is a custom in a manor that a man may convey his copyhold in fee simple, it will also enable him to convey for life or any other estate; for the less is implied in the greater, and though customs must be strictly, yet they need not in every case be literally, construed. (*Co. Cop. s. 133.*)

Moreover, all special customs must submit to the queen's prerogative. Therefore, if the queen purchases lands of the nature of gavelkind, where all the sons inherit equally; yet, upon the queen's demise, her eldest son shall succeed to those lands alone. (*Co. Lit. 15; 1 Bla. Com. 78.*)

And thus much for the second part of the *leges non scriptæ*, or those particular customs which affect particular persons or districts only.

3rd: As to those peculiar laws which by custom are adopted and used only in certain peculiar courts and jurisdictions, they are to be understood as the civil and canon laws. (See 1 *Bla. Com. 79.*)

(3.) Peculiar laws used in particular courts, are the civil and canon laws.

STATUTE LAW.]—We will now proceed as to the statute law, or, in other words, the *leges scriptæ*; which consist of statutes, acts, or edicts made by the queen's majesty, by and with the advice and consent of the lords spiritual and temporal and commons in parliament assembled. (1 *Bla. Com. 78 (a); Com. Dig. Parliament, R. 3.*)

Statute law.

Many ancient statutes are penned in the form of charters, ordinances, commands, or prohibitions from the king, without mentioning the concurrence of either lords or commons; yet, inasmuch as they have always been acquiesced in as unquestionably authentic, this establishes and confirms their authority, and the defect is salved by such universal reception. (*Hawkins's Preface to Statutes.*)

Statutes not in the name of the whole legislature.

Others make mention of the king and lords only, though to many of these latter, the assent of the commons may be presumed to have been given;—lastly, an instance is not wanting of an act of parliament passed by the king and commons without the lords, *viz.*, 1 *Edw. 6, c. 5.*

As regards the making of these statutes, see 1 *Bla. Com. Parliament; Com. Dig. Parliament; Bac. Ab. Statutes; Dwarrris on Stat. 4, 6.* For the nature of ordinances, patents, and charters, and the difference between them and statutes, see *Dwar. on Stat. 3.*

We will now proceed to inquire into—

- I. *The different Kinds of Statutes*, p. 702.
- II. *What Statutes are Void*, p. 706.
- III. *Of the Form and Parts of a Statute*, p. 707.
- IV. *Time when Statute begins to take Effect, and how long it remains in Force*, p. 708.
- V. *Of the Authority of Statutes*, p. 710.
- VI. *Things incidental to, and necessarily implied in*, p. 711.
- VII. *Construction of*, p. 714.
- VIII. *Repeal of, what shall be, and effect of*, p. 726.
- IX. *How disobedience to, may be punished, &c.*, p. 730.
- X. *Of Pleading a Statute, and Proof of*, p. 731.

(a) The oldest statute now extant, and printed in our statute books, is the famous *Magna Charta*, as con-

firmed in parliament, 9 *Hen. 3*; though, doubtless, there were many acts before that time.

1. *The different  
Kinds of Sta-  
tutes.*

Either public,  
general, or pri-  
vate.

Public acts, what.

Private acts,  
what.

Local and per-  
sonal.

Instances.

# I. The Different Kinds of Statutes.

PUBLIC OR PRIVATE STATUTES.]—Statutes are either general or special, public or private.

A *general* or *public* act is a universal rule, that regards the whole community; and of this the courts of law are bound to take notice judicially and *ex officio*; without the statute being particularly pleaded, or formally set forth by the party who claims an advantage under it. (1 *Bla. Com.* 85.)

*Special* or *private* acts are rather exceptions than rules, being those which only operate upon particular persons and private concerns: such as the Romans entitled *senatus decreta*, in contradistinction to the *senatus consulta*, which regarded the whole community; and of these (which are not promulgated with the same notoriety as the former) the judges are not bound to take notice, unless they be formally shown and pleaded.

Of private acts some are *local*, as affecting particular places only; others *personal*, as confined to particular persons: of the first kind, an inclosure act is an example; of the second, an act for divorce, or change of name. In many acts which would otherwise be private statutes, an express clause is now usually introduced directing that they shall be considered as public. As to such clause, see *ante*, "*Evidence*."

To show the distinction between public and private acts, it should be observed, that the 13 Eliz. c. 10, to prevent spiritual persons from making leases for longer terms than twenty-one years, or three lives, is a public act; it being a rule prescribed to the whole body of spiritual persons in the nation: but an act to enable the Bishop of Chester to make a lease to A. B. for sixty years is an exception to this rule; it concerns only the parties and the bishop's successors; and is therefore a private act. (1 *Bla. Com.* 86.)

All acts which concern the king or queen, or the prince, are general and public acts. (8 *Co.* 28 a.; *The Prince's case*, 4 *Rep.* 13, 77 a.)

So, a statute which concerns the whole spirituality, will be a general and public act: as the 21 Hen. 8, c. 13. (*Holland's case*, 4 *Rep.* 76 a.; *Brownl.* 208.)

So, a statute which extends to all officers in general: as the 21 Will. 1, c. 26, Doct. pl. 3, that no sheriff or other minister take reward to do his office, but shall be paid of that which they take of the king. (*Holland's case*, 4 *Rep.* 76 a.)

So, a statute which concerns trade in general. (*Holland's case*, 4 *Rep.* 76 b; *Lutw.* 1410; *Kirk v. Nowill*, 1 *T. R.* 125.)

So, a statute by which penalties are given to the king: as the 2 P. & M. c. 11, relating to woollen weavers, &c. (*Skin.* 429.)

So, a statute which concerns all the lords generally: as the stat. *Marl.* 3. (*Holland's case*, 4 *Rep.* 76 b.)

So, if it concerns all persons generally, though it be but a special or particular thing: as, a statute which concerns appeals or assizes, or other particular action. (*Id.*)

A statute which concerns only a particular species or thing, or person, will be a private act, of which the judges will not take notice without pleading it: as, the 18 Eliz. c. 6, touching the colleges only in the universities; (*Eton and Winchester*, 4 *Rep.* 76 a.;) and acts for the toleration of dissenters. (4 *Co.* 76 a. b.)

In a private act of parliament, the legislature only lends its aid to the agreement of the parties, in order to render it effectual when any public reason stands in the way. (By Lord *Mansfield*, *C. J.*, *R. v. Toms*, *Dougl.* 406.)

It is a rule, that private acts of parliament, introduced only for the settlement of particular estates, ought to be considered only as common

conveyances, and directed by the same rules of law. (By Lord *Hardwicke*, *C. J.*, *Hornby v. Houlditch*, 1 *T. R.* 93, n. a.; *Lucy v. Levington*, 1 *Ventr.* 176; and see *Eton College v. Bishop of Winchester*, *Lofft*, 401.)

So, a statute which relates to a particular place or town, will be a private law, though it concerns all persons: as, if it relates to such a manor, town, &c. (4 *Rep. b.*; *Skin.* 350.)

So, if it relates to a particular trade. (*Holland's case*, 4 *Rep.* 76; *Kirk v. Nowill*, 1 *T. R.* 125.)

Or to divers particular towns. (*Holland's case*, 4 *Rep.* 76 b.)

Or to one or divers particular counties. (*Id.*)

But if an act of parliament for the formation of a railway, contain a declaration that it is to be judicially taken notice of as a public act, it cannot be treated or construed as a private assurance. (*Hargreaves v. Lancaster and Preston Railway Co.*, 1 *Rail. Cas.* 416.)

Although a statute be of a private nature, yet if a forfeiture be thereby given to the queen, it is a public statute. (*R. v. Baggs*, *Skin.* 429.) And a private act if recognized by a public act, must afterwards be noticed by the courts as a general law. (2 *Term Rep.* 569.)

In a general act there may be a private clause; as in the 3 Jac. 1, c. 5, the clause which gives the benefices of recusants in such particular counties to the university, is a private law. (*Case of the Chancellor of the University of Oxford*, 10 *Rep.* 57 b.)

A canal act is not rendered a public act by containing provisions empowering the company to regulate and take tonnage rates and tolls from persons using the canal. (*Brett v. Beales*, 1 *M. & M. C. N. P.* 425.)

Private statutes, unlike general acts, will not bind strangers, though they may contain no saving of their rights; thus it has been laid down that if a statute reciting that whereas there was a controversy concerning land between A. and B., should enact that A. should enjoy it, this would not bind the interest of third persons in that land; (*Lucy v. Levington*, 1 *Ventr.* 175;) but a party interested in the subject-matter of a private act of parliament will have his rights affected by its provisions, though it may have been introduced and passed without notice duly given to him. (*Edinburgh Railway Co. v. Wauchope*, 8 *Cl. & Fin.* 710.)

A private act of parliament containing a clause, that it shall be deemed and taken to be a public act, and shall be judicially taken notice of without being specially pleaded, may be proved in the same manner as public acts, (and as to which see *ante*, "Evidence,") though it may not have the effect of a public act. (*Beaumont v. Mountain*, 10 *Bingh.* 404; *Woodward v. Cotton*, 1 *Crom. M. & Ros.* 44; 4 *Tyrwhitt*, 689, *S. C.*; *Brett v. Beales*, 1 *M. & M.* 421; *Hesse v. Stevenson*, 3 *B. & P.* 565; *Purchard v. Heywood*, 8 *T. R.* 468.)

A Court of Requests Act (made public by last clause,) giving commissioners jurisdiction over debts wheresoever contracted, if defendant be within their jurisdiction, was held to be a public, local, and personal act, within 5 & 6 Vict. c. 97, s. 5. (*Cock v. Gent*, 12 *M. & W.* 234.)

DECLARATORY STATUTES.]—Statutes also are either *declaratory* of the common law, or *remedial* of some defects therein. Declaratory statutes, what.

*Declaratory*, where the old custom of the kingdom is almost fallen into disuse, or become disputable; in which case the parliament has thought proper, *in perpetuum rei testimonium*, and for avoiding all doubts and difficulties, to declare what the common law is and ever hath been. Thus, the statutes of treasons, 25 Edw. 3, c. 2, doth not make any new species of treasons, but only, for the benefit of the subject, *declares* and enumerates those several kinds of offence which were before treason at the common law. (1 *Bla. Com.* 86.)

So, the 46 Geo. 3, c. 37, *declares* that a witness cannot by law refuse

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to answer a question relevant to the matter in issue, the answerer which has no tendency to accuse himself or expose him to penalty or forfeiture, though his answer may subject him to a civil action. The statute does not profess to introduce a *new* law, but only *declares* what is the existing law, in consequence of the contrariety of opinions delivered by the judges. (See "*Evidence*.")

The word *declare* in the act expounds what was the common law before. (*Twynne's case*, 3 Rep.)

Affirmative and negative.

Affirmative do not take away common law.

Declaratory acts are either affirmative or negative. A statute made in the affirmative without any negative expressed or implied does not take away the common law. (2 Inst. 200; 1 Inst. 111, 115: Pl. Con 112.)

Thus, by 42 Edw. 3, c. 11, it is enacted, that the panel of assize shall be arranged four days before the day of assize; yet if this be done two days before it is good, for two days were sufficient at the common law.

Nor a former custom.

Where *Southwark* chose scavengers by custom, the 14 Car. 2, c. 1, which says, *constables and churchwardens, &c., shall meet in Easter week and choose*, does not take away a custom to choose at the leet. (*Duke of Mayor, &c., of London v. Gaford*, 2 Mod. 41.)

Nor prior exemption.

So, affirmative statutes do not take away a prior exemption. (*R. v. Pugh, Dougl.* 188.)

But negative do.

A negative statute, on the other hand, so binds the common law that a man cannot afterwards have recourse to the latter. (*Bro. Parl.* 72.)

Difference between affirmative and negative statutes.

The difference between affirmative and negative statutes may be thus illustrated. If a statute were made that it should be lawful for tenants in fee simple to make a lease for twenty-one years and that such lease should be good, this affirmative statute cannot restrain him from making a lease for sixty years, because such would be good at common law: but if it have negative words, as *that it shall not* be lawful for him to make a lease for above twenty-one years, or that a lease for more *should not be good*, he will be restrained.

It is a question of much difficulty and of some importance whether since an affirmative statute does not take away a custom, a negative statute will do so. The better opinion, supported by the authority of Lord Coke, seems to be that it will not; but later cases tend to establish a contrary doctrine. (See *Dw. on Stat.* 639.)

Remedial statutes, what.

REMEDIAL STATUTES]—Are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever.

Enlarging and restraining statutes, what.

And this being done, either by enlarging the common law where it was too narrow and circumscribed, or by restraining it where it was too lax and luxuriant, hath occasioned another subordinate division of remedial acts of parliament into enlarging and restraining statutes. Instance the case of treason, in clipping the current coin of the kingdom, which was an offence not sufficiently guarded against by the common law; therefore it was thought expedient, by the 5 Eliz. c. 11, to make it high treason, which it was not at the common law: so that this was an enlarging statute. At common law, also, spiritual corporations might lease out their estates for any term of years, till prevented by the 13 Eliz. before mentioned: this was, therefore, a restraining statute.

In legal language a remedial statute has a further signification, *viz.* a statute giving a party a mode of remedy for a wrong where he had none, or a different one, before: *e. g.* the statutes of hue and cry (now repealed by, but most of the enactments re-enacted by, the 7 & 8 Geo. 4, c. 31). These statutes neither enlarged nor abridged the common

law, and therefore neither supplied its defects nor restrained its excesses; but, as the common law itself originally provided for an exigency, so did the statute. Of such a description, namely, remedial, is the giving the owner a right to recover the stolen thing of the person who may have purchased it, provided such owner shall have proceeded to conviction. So, also, the statutes against gaming, which give the loser a right to recover the money lost. (1 *Bla. Com.* by Lee, p. 87, n. 34.)

A penal statute may also be a remedial law. (*Sir W. Wynne v. Middleton*, 1 *Wils.* 126.)

And a statute may be penal in one part and remedial in another part. (*Dougl.* 702.)

Where a statute gives accumulated damages to the party grieved it is not penal. (*Woodgate v. Knatchbull*, 2 *T. R.* 154.)

The statute 4 Geo. 2, c. 28, s. 1, is, it seems, a remedial law, (*Wilkinson v. Colley*, 5 *Burr.* 2694,) though this was denied by *Ld. Ellenborough*, C. J. in *Lloyd v. Rosbee*, 2 *Camp.* 454. The 7 Geo. 2, c. 8, is a remedial rather than a penal act. (*Billing v. Flight*, 6 *Taunt.* 419.)

The 11 Geo. 2, c. 19, is a remedial and not a penal act. (*Stanley v. Wharton*, 9 *Price*, 304.)

The 24 Geo. 2, c. 44, is not a penal act. (Now repealed as to actions against justices.) (*Joy v. Orchard*, 2 *B. & P.* 39.)

A statute for suppression of wrong, or for public good, shall be construed like a remedial act, though it be penal against the offenders. (*Pl. Com.* 82 a, 17 a.)

PENAL STATUTES.]—Penal statutes are acts of parliament whereby a forfeiture is inflicted for transgressing the provisions therein contained. Penal statutes.

Where a thing is prohibited under a penalty, if the penalty or part of it, be not given to him who will sue for the same, it goes and belongs to the king. (*Rast. Entr.* 433; 2 *Hawk. P. C.* c. 24, s. 17.) The king cannot grant to any person any penalty or forfeiture, &c., due by any statute, before judgment thereupon had; (Stat. 21 Jac. 1, c. 3;) though after plea pleaded, justices of assize, &c., having power to hear and determine offences done against any penal statute, may compound the penalties with the defendant, by virtue of the king's warrant or privy seal. (Sect. 8.) (See "*Informations.*")

Where penalties are ordained by penal acts of parliament to be recovered in any court of record, this is to be understood only of the courts at Westminster, and not of the courts of record of inferior jurisdictions. (See *Jenk. Cent.* 228.)

Where a statute gives accumulated damages to the party grieved, it is not a penal statute. (*Woodgate v. Knatchbull*, 2 *T. R.* 154.)

The stat. of Glou. 5, which gives treble damages, &c. in waste, against tenant for years, extends by equity to a tenant for half a year. (*Pl. Com.* 178.)

The stat. Will. 2, which gives debt against a gaoler for an escape of one committed for arrearages of an account, extends to an escape of any committed in execution for debt. (*Pl. Com.* 178 a, 35 a.)

So the stat. of Glou. 5, which gives remedy for waste against a lessee, extends to a devisee for life or years. (*Pl. Com.* 10 a.)

The stat. 1 Edw. 2, *de fragentibus prisonam*, says that a felon who breaks prison shall be guilty of felony; but it shall not be so if the prison was on fire. (*Pl. Com.* 13. Nor if the escape be through the breaking by others without the privity of the prisoner escaping thereby. 1 *Hale*, *P. C.* 611.)

1. *The different Kinds of Statutes.*

Statute penal may be also remedial.

## 2. What Statutes are Void.

Acts derogatory to the power of subsequent parliaments bind not.

## II. What Statutes are Void.

Acts of parliament derogatory from the power of subsequent parliaments bind not. So, the 11 Hen. 7, c. 1, which directs that no person, for assisting a king *de facto*, shall be attainted of treason by act of parliament, or otherwise, is held to be good only as to common prosecutions for high treason; but will not restrain or clog any parliamentary attainder. (4 *Inst.* 43.) Because the legislature, being in truth the sovereign power, is always of equal, always of absolute, authority: it acknowledges no superior upon earth, which the prior legislature must have been, if its ordinances could bind a subsequent parliament. And upon the same principle, Cicero, in his letters to Atticus, treats with a proper contempt these restraining clauses, which endeavour to tie up the hands of succeeding legislatures. "When you repeal the law itself," says he, "you, at the same time, repeal the prohibitory clause, which guards against such repeal." (1 *Bla. Com.* 90.)

Statutes enacting impossibilities, are invalid. So, where absurdities follow.

Acts of parliament that are impossible to be performed are of no validity; and, if there arise out of them collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void. I lay down the rule with these restrictions; though I know it is generally laid down more largely, that acts of parliament contrary to reason are void. But if the parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it; and the examples usually alleged in support of this sense of the rule do none of them prove that, where the main object of a statute is unreasonable, the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government. But where some collateral matter arises out of the general words, and happens to be unreasonable, there the judges are in decency to conclude that this consequence was not foreseen by the parliament, and therefore they are at liberty to expound the statute by equity, and only *quoad hoc* disregard it. Thus, if an act of parliament gives a man power to try all causes that arise within his manor of Dale, yet if a cause should arise in which he himself is a party, the act is construed not to extend to that, because it is unreasonable that any man should determine his own quarrel. (*Bonham's case*, 8 *Rep.* 118.) But if we could conceive it possible for the parliament to enact, that he should try as well his own causes as those of other persons, there is no court that has power to defeat the intent of the legislature, when couched in such evident and express words as to leave no doubt whether it was the intent of the legislature or no. (*Id.*)

If an act of parliament is clearly and unequivocally expressed, with all deference to the learned commentator, I conceive it is neither void in its direct nor collateral consequences, however absurd and unreasonable they may appear. If the expression will admit of doubt, it will not then be presumed that the construction can be agreeable to the intention of the legislature, the consequences of which are unreasonable; but, where the signification of a statute is manifest, no authority less than that of parliament can restrain its operation. (1 *Bla. Com.* Note by *Christian*.)

Statute against law of God void.

A statute cannot make it lawful for A. to commit adultery with the wife of B., for the law of God forbids it; but it may dissolve her marriage with B., and so enable her to marry A. (*City of London v. Wood*, 12 *Mod.* 688.)

Statutes void by improper framing of.

As to what statutes are void by reason of defective parties to the framing of, and improper framing of, see *Bac. Ab. Statutes*, (A.)

### III. Of the Form and Parts of a Statute.

Formerly the bill, or proposed enactment, was in the nature of a petition, which was entered upon the parliament roll, and upon the roll the royal assent was likewise entered. Upon this groundwork the judges used, at the end of the parliament, to draw up the act of parliament into the form of a statute, which was afterwards entered upon the statute roll. Now, however, the statute in its perfect form is at once brought into the house. (*Dwarris on Stat.* 652.)

The established form for a statute is, "Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, that," &c.

The parts of a statute are in a popular, though not legal sense—the Title—the Preamble—the Purview or body of the Act—Clauses—Provisos—Exceptions—the Date.

The title of a statute, it has been repeatedly held, is no part of the statute (*Barrington on Stat.* 449, *notis*; *R. v. Williams*, 1 *W. Bl.* 85), for it is usually framed only by the clerk of that house in which the bill first passes. (3 *Rep.* 33, *Poulter's case*.)

But taken in connection with what are acknowledged parts of the statute, the title, where the intent is not plain, may slightly assist in removing ambiguities, and for this purpose is occasionally referred to; thus, in *R. v. Inhab. of Gwenmap, Grose*, J. said, "If we read the titles and preambles of the three acts (which are in *pari materia*) there can be no doubt." (5 *T. R.* 135; see also *R. v. Cartwright*, 4 *T. R.* 490; *R. v. Marks*, 3 *East*, 160; *Dw. on Stat.* 654.)

The preamble usually contains the motives and inducements to the making of it, but it has also been held to be no part of the statute. (6 *Mod.* 62; *Wills v. Willkins*, 6 *Mod.* 144.)

The degree of influence which the preamble ought to have in expounding statutes will be treated of hereafter, when the rules for the construction of statutes are taken into consideration.

The preamble of an act of parliament, reciting that certain outrages had been committed in particular parts of the kingdom, was adjudged by the Court of King's Bench to be admissible in evidence, for the purpose of proving an introductory averment in an information for a libel that outrages of that description had existed. (*R. v. Sutton*, 4 *M. & Sel.* 532.)

The true meaning of the statute is generally to be sought from the purview or body of the act.

The clauses contain the several enactments devised by the legislature for carrying out the general object of the act.

A saving in a statute is only an exception of a special thing out of the general things mentioned in a statute. (*Holliswell v. Bridgewater*, 2 *And.* 192.)

A proviso is something engrafted upon a preceding enactment. (9 *B. & C.* 835.) The different effects of a repugnant proviso and repugnant saving clause will be found treated of hereafter (*post*, p. 716).

An exception is where, in the enacting clause itself of a statute, a particular case is exempted from its operation; and differs from a proviso in this, that where, in pleading, the enacting clause is set out or relied on, the exception must be expressly negatived, whereas what comes by way of proviso must be insisted on by the opposite party. (*Post.* 430; 1 *East*, 644; *Burr.* 148; *Grand Junction Railway Company v. White*, 2 *Railway Cases*, 559.)

By the stat. 33 Geo. 3, c. 13, the indorsement by that act directed to be made by the clerk of the parliaments on every act, of the day, month, and year when the same shall have passed and shall have received the royal assent, shall be taken to be a part of such act, &c.

3. Of the Form and Parts of a Statute.

Form.

Parts.

Preamble.

Purview or body of the act.

Clauses.

Saving.

Proviso.

Exception.



4. *Time when Statute begins to take Effect, and how long it continues in Force.*

Time of taking effect.

#### IV. Time when Statute begins to take Effect, and how long it continues in Force.

*Time when it begins to take effect.*—If an act of parliament had been brought in at the close of a session, and passed on the last day, which made an innocent act criminal, or even a capital crime, and if no day was fixed for the commencement of its operation, it had the same efficacy as if it had been passed on the first day of the session; and all who during a long session had been doing an act which at that time was legal and inoffensive, were liable to suffer the punishment prescribed by the statute. (4 *Inst.* 25; *Latless v. Holmes*, 4 *T. R.* 660; and see *Rumsey v. Tuffnell*, 2 *Bing.* 257; 9 *Moore*, 425; *Atty. Gen. v. Panter*, 6 *Bro. P. C.* 553.) But this absurdity was removed by the 33 Geo. 3, c. 13, by which it was enacted, that when the operation of an act of parliament is not directed to commence from any time specified within it, the clerk of the parliaments shall endorse upon it the day upon which it receives the royal assent, and that day shall be the date of its commencement.

Even the present rule operates with some degree of harshness; for a statute is to operate from the very day it passes, if the law itself does not appoint the time; thus persons in distant parts of the kingdom may be subjected to the operation of an act though it be impossible that they can have had notice of its existence, for it is an established maxim that ignorance of law will not excuse a crime (see 4 *Bla. Com.* 27); but ignorance of a law which is of very recent enactment will, in some cases, afford good reason for a pardon. Thus, where the prisoner was indicted for maliciously shooting a person, and the offence was committed within a few weeks after the passing of the 39 Geo. 3, c. 37, and before notice of it could have reached the place where the offence was committed, the judges thought that, as he could not have known of the act, he ought to have a pardon. (*R. v. Bailey, R. & R.* 1.)

Although in an act of parliament it is expressly enacted, that it shall commence and take effect from a day named, yet, if the royal assent be not obtained until a day subsequent, the provisions of a particular section in its terms prospective, do not take effect until such subsequent day. (*Burn v. Carvalhó, (in error,)* 4 *Nev. & M.* 893; but see *R. v. Swiney; Alcock & Napier*, 131, *Irish Reports*.)

An act made to correct an error by omission in a former statute of the same session, relates back to the time when the first act passed, and must be taken together as if they were one and the same act. (*Att. Gen. v. Pougett*, 2 *Price*, 381.)

It is in general true that no statute is to have a retrospect beyond the time of its commencement; for the rule and law of parliament is, that "*Nova constitutio futuris formam debet imponere non præteritis.*" (*Bac. Ab. Statutes, C.*; and see 1 *Bla. Com.* 46; *Couch v. Jeffries, Burr.* 2460; *Wilkinson v. Meyer, Lord Raym.* 1350; *Fowler v. Chatterton*, 6 *Bingh.* 258; *Kirkhaugh v. Herbert, Id.* 265.)

Thus, before the day on which the Statute of Frauds took effect, (24 June, 1677,) a verbal promise was made to give or bequeath a sum of money in consideration of marriage. In an action against the executors the question was, whether this promise was within the 29 Car. 2, c. 3:—by the court "It cannot be presumed that the statute was to have a retrospect so as to take away a right of action which the plaintiff was entitled to before the time of its commencement." (*Gilmore v. Shuter*, 2 *Lev.* 227; see also, *Ashburnham v. Bradshaw*, 2 *Atk.* 36; *Att. Gen. v. Lloyd*, 3 *Atk.* 541; *Att. Gen. v. Andrews*, 1 *Ves. Sen.* 225.)

But a statute may have a retrospect to a time antecedent to that of its commencement. (*Bac. Ab. Statutes, C.*)

In construing a statute made after the entering into a contract, the

Ignorance of statute, how far an excuse for a crime.

When retrospective.

sense of the words ought not to be strained, so as to avoid the contract, to the benefit whereof some person was entitled at the time the statute was made. (*Wilkinson v. Meyer*, Lord Raym. 1352.)

Where by an act a duty is imposed, with a retrospective date depending on a fact which has taken place, and which is provided for by the alternative expressions "shall be," or "shall have been found," it seems that the duty attaches from such respective date. (*Hume v. Haig*, (in error,) 8 Bro. P. C. 196.)

A statute authorising certain duties to be assessed and collected under the regulations of any act to be passed in the same session of parliament, for consolidating, &c., was held to speak the language of the legislature as from the commencement of and with reference to the whole session, and to relate to a prior act, with the title referred to, passed in the same session and indorsed accordingly with a prior date by virtue of the 33 Geo. 3, c. 13. (*Nares v. Rowles*, 14 East, 510.)

By the 48 Geo. 3, c. 106, where any bill shall be introduced into any session of parliament, for the continuance of any act which would expire in such session, and such act shall have expired before the bill for continuing the same shall have received the royal assent, such continuing act shall be deemed to have effect from the date of the expiration of the act intended to be continued, except it shall be otherwise provided in such continuing act. But nothing herein contained shall extend to affect any person with any punishment, penalty, or forfeiture, by reason of anything done or omitted to be done contrary to the provisions of the act continued, between the expiration of the same and the date at which the act continuing the same shall receive the royal assent. (As to the repeal of a statute, and its effect, see *post*, 726.)

*How long a statute continues in force.*]—Some statutes are temporary, others are perpetual.

A temporary statute continues in force, unless it be sooner repealed, until the time for which it is made expires: a perpetual one, until it is repealed. (*Bac. Ab. Statutes, D.*)

A temporary statute is sometimes made to continue in force after it has ceased to operate substantially, for the purpose of supporting prosecutions against those who have violated it during the term specified for its continuance. (*Id.*) *Ex gr.* 29 Geo. 3, c. 64; 33 Geo. 3, c. 66, &c. &c.

Every statute for the continuance of which no time is limited, is perpetual, although it be not expressly declared so. (*Id.*)

If an act be to have continuance for three years, and from thence to the end of the next session of parliament, it shall continue to the end of a session which begins after the three years, though a session within three years continues several months or years after the three years. (1 *Vent.* 22.)

If a temporary act be continued, or an expired statute be revived by another statute, the law derives its force from the first act which is to be considered as in operation by means of this continuance or revival. (*Dw. on Stat.* 671; *R. v. Morgan*, *Strange*, 1066; *Shipman v. Henbest*, 4 *T. R.* 109.)

If a temporary act be revived after it has expired, without a special provision reaching to the intermediate time, the intermediate time is lost. No proceedings can be pursued under a repealed or expired statute, though commenced before the repeal or expiration, unless by special exception. (*Dw. on Stat.* 671; *Miller's case*, 3 *Wils.* 420.)

4. *Time when Statute begins to take Effect, and how long it continues in Force.*

"Act to be passed" may mean "act passed."

48 Geo. 3, c. 106.

How long a statute continues in force.

## 5. Authority of Statutes.

## V. Authority of Statutes.

Extent of authority.

A statute is the highest authority which this kingdom acknowledges on earth; (1 *Bl. Com.* 185;) it has power to bind every subject in the land and the dominions thereunto belonging, nay, even the king himself, if particularly named therein. The limits of its authority can scarcely be defined. Whatever a government has power to enforce, the legislature has power to enact.

Binds to perform duties subsequently imposed.

Statutes often affect matters of subsequent creation, in like manner as an immemorial custom will embrace matters arising within the time of legal memory. (12 *Mod.* 485.) Thus the 31 Eliz. c. 5, s. 2, which requires a particular venue in penal actions, affects other penal actions since created. (*Barber v. Tilson*, 3 *M. & S.* 429.) And a bond given pursuant to 12 Geo. 2, c. 29, was held to bind defendant to performance of trusts imposed by subsequent acts of parliament. (*Farr v. Holles*, 9 *B. & C.* 315.)

When the queen is bound by.

If an act speaks of the king *indefiniti*, being named in his politic capacity, it extends to all his successors. (12 *Rep.* 110; *the case of Soldiers*, 6 *Rep.* 27 a.)

So, to a queen, if the crown descends to a female. (12 *Co.* 110.)

A statute beginning "*Rex perpendens*," &c. so "the king commandeth that no man shall disturb any electors to make free election," are instances where the king, being named, is bound. (*Dw. on Stat.* 669; 2 *Inst.* 31.)

And though the king be not expressly named, yet if there be equivalent words, or if the prerogative be included by necessary implication, he will be bound. Thus by 7 Hen. 4, c. 4, it is provided that protection should not lie for a warden of a prison, in debt brought against him upon an escape. As none can grant protection but the king, this statute is held to bind the king. (*Dwar.* 669, *et not.*)

But, generally, the king shall not be restrained of a liberty or a right which he had before, by the general words of an act of parliament, if the king be not named in the act. (*Pl. Com.* 240; *Rex v. Cook*, 3 *T. R.* 521; *Case of Magdalen College*, 11 *Rep.* 66; see *R. v. Wright*, 1 *A. & E.* 437; 3 *Nev. & M.* 892.)

Yet, if a statute be intended to give a remedy against a wrong, the king, though not named, shall be bound by it; as by the 32 Hen. 8, c. 28, to prevent a discontinuance by the husband of the lands of his wife during coverture. (2 *Inst.* 681.)

So, in all statutes made against wrong, to prevent fraud, or the decay of religion, the king is bound. (*Case of the Ecclesiastical Persons*, 5 *Rep.* 14 b.)

And therefore the king shall be bound by the statute Will. 2, c. 1, *de donis*. (*Case of the Ecclesiastical Persons*, 5 *Rep.* 14 b.)

So, by the statute Will. 2, c. 5, against tortious usurpations. (*Id.*)

So, by the statute of 31 Eliz. c. 6, against simony. (*Co. Litt.* 120 a.)

So, the king, though not named, is bound by acts for the advancement of religion, or of learning, or providing for the poor, as the act 10 Car. 1, for uniting livings in Ireland. (*R. v. Archbishop of Armagh*; *Str.* 516.)

Clauses which limit in any way the right of the crown must be considered as repealed by subsequent statutes, unless expressly re-enacted. (*Att. Gen v. Neuman*, 1 *Price*, 438.)

A statute made for the benefit of the king shall be construed most beneficially for him: as the 17 Edw. 2, *de Præben Regis*, c. 1, (repealed by 12 Car. 2, c. 24,) which says, that the king shall have the ward of his tenant seised in fee, extends to his tenant seised in tail. (*Pl. Com.* 11 a.)

When a statute creates a penalty, and says that one moiety shall be

given to the use of the king, and the other to a common informer, the 6. *Things inci-*  
 king may sue for the whole, unless a common informer has com- *cidental to a Sta-*  
 menced a *qui-tam* suit for the penalty. (*R. v. Hymen*, 7 T. R. 536). *tute, and neces-*  
*sarily implied.*

## VI. Things incidental to a Statute, and necessarily implied.

Wherever an act of parliament gives a right, the common law gives a remedy. (*Ashby v. White*, Salk. 20, 21; *Ashby v. White*, 6 Mod. 54.) Where statute gives a right, the common law gives remedy.

And whenever a provision of a statute is general, everything which is necessary to make such provision effectual is supplied by the common law. (1 *Inst.* 235; 2 *ed.* 222.)

Whenever a power is given by a statute, everything necessary to the making of it effectual is given by implication: for the maxim is, *Quando lex aliquid aliqui concedit, conceditur et id sine quo res ipsa esse non potest.* (12 *Rep.* 131; 2 *Inst.* 306.)

Thus where a statute gives power to the justices to require any person to do a thing, as to take the oaths, the law impliedly gives them power to issue their precept to have the body before them: for when the law granteth any thing to any one, that also is granted without which the thing itself cannot be; and it is against the office of the justices, and the authority given them by the law, that they shall go and seek the parties. Power to convene the parties.

If an offence be made felony by a statute, such statute does by necessary consequence subject the offender to the like attainder and forfeiture, and does require the like construction, as to those who shall be accounted accessaries before or after the fact, and to all other intents and purposes, as a felony at the common law does. (1 *Hawk.* c. 41, s. 4; 3 *Inst.* 47, 49, 50.)

Misprision of felony is as well incidental to a felony created by a statute as to one at the common law. (1 *H. H. P. C.* 652.)

In all cases where justices may take examinations, or other accusation or proof, though the statute doth not expressly set down that it shall be upon oath, yet it shall be intended that it shall be upon oath. (*Dalt.* c. 115.) Power to administer an oath.

Generally it is holden, that where a statute appoints a thing to be done by one or more justices without giving any appeal to the sessions, there the justices in sessions may do that thing; but where an appeal is given to the sessions, the justices in sessions cannot proceed originally therein, because that method would take away the power of appealing. (See "*Sessions.*") In what case sessions may execute the power given to two justices.

Where a statute gives power to the justices of the peace to hear and determine an offence in a summary way, it is necessarily implied and supposed, as a part of natural justice, that the party be first cited, and have opportunity to be heard and answer for himself. (1 *Haw.* c. 64, s. 60; *R. v. Benn*, 6 *Term Rep.* 198; *Painter v. Liverpool Gas Company*, 3 *A. & E.* 433.) Necessity of summoning the party.

Where an act of parliament gives power to two justices finally to hear and determine an offence, it is necessarily supposed, that they shall be both together, or which is the same thing in other words, that they shall hold a special sessions for that purpose. And the like is, when they are to do any other judicial act, as to make an order of bastardy, or adjudge the settlement of a poor person. For it is unknown to the laws of England, that two persons shall act as judges in the same cause, when at the same time one of them is in one part of the country and the other in another. (See "*Justices.*") Two justices to be both together.

Where a statute appoints a conviction to be on the oath of one witness, this ought not to be by the single oath of the informer; for if the same person shall be allowed to be both prosecutor and witness, it Informer's oath.

6. *Things incidental to a Statute, and necessarily implied.*

would induce profligate persons to commit perjury for the sake of the reward. (*R. v. Stone*, 2 *Ld. Raym.* 1545; 1 *Sess. Cas.* 378; see "*Conviction*," "*Evidence*."

Confession.

Where a statute directeth that a person shall be convicted of an offence upon the oath of one or more witnesses, and saith nothing of the confession of the party, yet if the offender shall before the justice confess the offence, he may be convicted upon such confession: for confession is stronger evidence than the oath of witnesses. (*Dalt.* 109, 162; *R. v. Gage*, 1 *Str.* 546; see "*Conviction*.");

Discretionary power.

Where an act of parliament gives power to the justices of the peace to take order in any matter according to their discretions, this shall be understood according to the rules of reason, law, and justice, and not by private opinion. (5 *Rep.* 100; see 8 *Howell's St. Tri.* 55 (*notis*); and "*Justices*.")

Mitigating penalties.

Where a statute gives discretionary power of mitigating penalties, it is a general rule that there the legislature must be taken to have intended to place the matter under the jurisdiction of the justices of the peace. (*Per Abbott, C. J., Reeve v. Poole*, 4 *B. & C.* 156; *R. v. Rawlinson*, 6 *D. & R.* 26.) See "*Conviction*."

Quakers' affirmation.

In all cases wherein, by any act of parliament, an oath shall be allowed or required, the solemn affirmation of Quakers shall be allowed instead of such an oath, although no particular or express provision be made for that purpose in the said act. (22 *Geo.* 2, c. 46, s. 3.) And so of others having scruples against taking an oath. See title "*Oaths*."

Forfeiture.

To say that a person shall forfeit generally, or that he shall forfeit to the king, is all one; for the king shall have every forfeiture not otherwise limited. (*Foster's case*, 11 *Rep.* 60.) Except where a forfeiture is given in lieu of property and interest; for there it shall go to the party injured. (1 *Roll. Rep.* 90.) For, wheresoever a statute giveth a forfeiture or penalty against him which wrongfully detaineth or dispossesseth another of his duty or interest, in that case, he that hath the wrong shall have the forfeiture or penalty, and shall have an action for the same upon the statute, and the king shall not have the forfeiture in that case. (1 *Inst.* 159.)

Single or several offences and penalties.

With regard to the recovery of several penalties against joint offenders, the rule seems to be that where an offence created or made penal by statute is in its nature single, one single penalty only can be recovered though several join in committing it; but if the offence is in its nature several, each offender is separately liable to the penalty. (*Cowp.* 610.) So, whether two penalties can be incurred on the same day will depend in like manner on the nature of the offence. Thus it was held, that only one penalty would be forfeited in one day, upon the 5 *Anne*, c. 14, s. 4, for keeping or using greyhounds for the destruction of game. (*Marriott v. Shaw*, *Com.* 274; *R. v. Mathews*, 10 *Mod.* 26.) But under 12 *Geo.* 2, c. 36, against the sale of certain books, each distinct act of sale on the same day was held a distinct offence. (*Brooke v. Milliken*, 3 *T. R.* 509.) See further, *Reg. v. Dean*, 12 *Mees. & W.* 39, and title "*Conviction*."

Fine and ransom.

Where a statute saith, that such a person shall pay fine and ransom to the king, in legal understanding such fine and ransom are all one: for, if they were divers, then should the party pay two sums, one for the fine and another for the ransom, which was never done. (1 *Inst.* 127.)

Acts of parliament that speak of fines or ransoms at the king's pleasure, are always to be understood of the king in his courts by his justices. (1 *Hale*, 375.)

Power of commitment when implied.

It is said, that wheresoever a justice of the peace is empowered, by any statute, to bind a person over, or to cause him to do a certain thing, and such person, being in his presence, shall refuse to be bound or to do such thing, the justice may commit him to the gaol, to remain

there till he shall comply. (2 *Haw. c. 16, s. 2*; see "*Commitment*," "*Justices*.")

When a statute appoints imprisonment, but limits no time when, it shall be immediately. (*Bonham's case, 8 Rep. 119.*)

When a statute appoints imprisonment, but limits no time how long, the prisoner in such case must remain at the discretion of the court. (*Dalt. 410.*)

Wherever a statute makes any offence felony, it incidentally gives it all the properties of felony at common law. (1 *Haw. c. 38, s. 18.*)

Therefore, an act of parliament that makes an offence felony, doth consequently introduce the punishment of concealing,—that is, misprision of felony; and every offence made felony by act of parliament includeth misprision. (1 *Hale, 708.*)

An act making a new felony extendeth not to infants under fourteen years of age; but if they be of that age it binds them. (1 *Hale, 706*; see "*Children*.")

Not only those crimes which are made felonies by the express words of any statute, but also those which are decreed to have or undergo judgment of life and member, do become felonies thereby, whether the word felony were mentioned or not. (1 *Haw. c. 40, s. 1.*)

But an offence shall never be made felony by the construction of any doubtful and ambiguous words of a statute; and, therefore, if it be only prohibited under pain of forfeiting body and goods, or of being at the king's will for body, lands and goods, it shall amount unto no more than a high misdemeanor, punishable by imprisonment or the like. (*Id. s. 2.*)

Saving of dower in a statute making an offence felony, is superfluous; for, by the 1 *Edw. 6, c. 12, s. 17*, dower is not lost by the felony of the husband.

Upon an indictment or other criminal prosecution, no damages can be given to the party grieved; but it is every day's practice in the court of Queen's Bench to induce defendants to make satisfaction to the prosecutors, by intimating an inclination on that account to mitigate the fine due to the king. (2 *Haw. c. 25, s. 3*; see further, "*Justices*," "*Conviction*.")

Where a statute gives treble damages, the justices are not to assess the damages, and then treble them; but the jury ought to find the damages, and then the justices are to treble them. (*Bumpstead's case, Cro. Car. 449*; "*Justices*.")

In all cases where a justice is required by an act of parliament to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by such act, it shall be lawful for such justice granting the warrant, therein to order and direct the goods distrained to be sold after a certain date to be limited in such warrant, unless such penalty or sum of money, together with the reasonable charges of taking and keeping the distress, be paid before that date. And the reasonable charges of taking, keeping, and selling the said distress, may be deducted, and the overplus, if any, shall be returned to the owner on demand. (11 & 12 *Vict. c. 43, s. 19*; see "*Warrant of Distress*.") Except only in cases of distress for Quakers' tithes and church-rates.

An act inflicting a penalty for a second offence must always be understood, after conviction and judgment for the first offence; and the second offence must be committed after the first conviction, and judgment thereupon given; for it doth not appear to be an offence, until judgment by proceeding of law be given against the offender. (2 *Inst. 468.*)

And the indictment for a second offence must recite the record of the first conviction; and, upon the evidence, the record of the first conviction must be proved: but the matter of the first conviction shall never be re-examined, but must stand for granted. (1 *Hale, 686.*)

6. Things incidental to a Statute, and necessarily implied.

Imprisonment.

Statute making an offence felony.

Misprision.

Infants.

Life and member.

Body and goods.

Forfeiture of dower.

Damages.

Treble damages.

Distress and sale.

Second offence.

6. <i>Things incidental to a Statute, and necessarily implied.</i>	In all cases of summary conviction, or of orders made by a justice or justices of the peace, they may in their discretion award and order in and by such conviction or order, that the defendant shall pay to the prosecutor or complainant respectively such costs as to the justices shall seem just and reasonable in that behalf. And in cases dismissed instead of ending by conviction, the justices may in like manner in their discretion award that the prosecutor or complainant pay the defendant's costs. (11 & 12 Vict. c. 43, s. 18; see " <i>Justices</i> .")
Costs.	
Expense of jury.	A private act which provides for the expense of maintaining a jury does not extend to a dinner given to them at a tavern after they had delivered their verdict. ( <i>Forster v. Taylor</i> , 3 Camp. 49.)
Forms given by statute.	As to how far the forms prescribed by a statute must be followed, see, fully, " <i>Conviction</i> ."
	If a particular form of a notice or order be prescribed by a private act of parliament, it must be fully set out and precisely pursued; and an allegation that due notice was given is not sufficient. ( <i>R. v. Croker</i> , 10 Coups. 30.)
	And a defective notice, under a private act of parliament, is not cured by the appearance of the party. ( <i>Id.</i> )
Clauses of limitation of proceedings under.	As to the construction of clauses limiting the time for bringing actions, &c., for prosecutions, &c., under the act, or for acts done under it, see " <i>Conviction</i> ," " <i>Justices</i> ," " <i>Time</i> ."
Limitation of prosecution on penal statutes.	All actions, indictments, or informations, on penal statutes, for any forfeiture limited to the king, shall be brought within two years after the offence committed; if limited to the king and prosecutor, then within one year; and if it is not sued for in that one year, then the king may sue for the same within two years after the expiration of that one year, and not otherwise. (31 Eliz. c. 5, s. 5.) That is to say, unless where it is otherwise specially directed by subsequent statutes. (See " <i>Information</i> .")
	Wherever a statute imposes terms and prescribes a thing to be done within a certain time, the lapse of a day is fatal, even in a penal case, because no inferior court can admit of any terms but such as directly and precisely satisfy the law. ( <i>Farrell v. Tomlinson</i> , 5 Bro. P. C. 438; <i>Bonham's case</i> , 8 Rep. 119.)
Act indemnifying persons acting under it.	It has uniformly been held, that where a party <i>bond fide</i> believes or supposes he is acting in pursuance of an act of parliament, and there is reasonable ground to justify him in such belief, he is within the protection of its clauses. (See the various decisions collected under the title " <i>Justices</i> .")
	Where an act gives certain privileges to officers who may be sued for things done in pursuance thereof, and a subsequent act imposes new obligations, the privileges given by the former act do not attach upon things done in pursuance of the latter. ( <i>Bazing v. Skelton</i> , 5 T. R. 16.)

## VII. Construction of Statutes.

Construction of statutes:

We have already, in the preceding section, while treating of some of those things which are incidental to a statute, and necessarily implied, noticed some rules for the construction of the same.

Nothing ought to be considered so necessary to the due administration of the office of justices of the peace as a thorough acquaintance with the mode of construing statutes, since by far the greater portion of their jurisdiction depends upon them.

Abridgments should never in any instance be relied on in the construction of a statute. The statute itself should be consulted. For, according to Lord Coke, the best exposition of all acts of parliament are the acts of parliament themselves: "*optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum*," and "*injustum est*

*nisi tota lege inspecta, una aliqua ejus particula proposita judicare vel respondere.*" 7. Construction of Statutes.

The following are the most prominent rules and principles by which statutes are to be construed.

All acts of parliament, as well private as general, shall be taken by a reasonable construction to be collected out of the words of the acts themselves, according to the true intent and meaning of the makers of the act. Therefore, if a corporation be misnamed, if it appear that it was intended, it is sufficient. (*Case of the Chancellor of the University of Oxford*, 10 Rep. 57, b.; *Com. Dig. Parliament*, R. 10; *Lord Mountjoy's case*, 5 Rep.)

Construction must be according to words and intent of act.

The rule for the construction of a statute, as given by *Bac. Abr. Statutes* (I.) 6. (from *Plowd.* 467), is to suppose the law-maker present, and to be asked what he intended, and then to give such an answer as he, being an upright and reasonable man, might have been expected to give.

Provisions in acts of parliament are to be understood according to the ordinary sense of the words, unless such construction would lead to some unreasonable result, or be inconsistent with or contrary to the declared or implied intention of the framer of the law, in which case the grammatical sense of the words may be extended or modified; instances of which are to be found in *Eyston v. Studd*, *Plowd.* 463; *Bac. Ab. Statutes* (I.), *per curiam*, in *R. v. Pease*, 4 B. & Ad. 40.

When the ordinary sense to be regarded or not.

When the provision of a statute is general, it is subject to the control and order of the common law, and it should be construed accordingly, for statutes are not presumed to make any alteration in the common law, further or otherwise than the act expressly declares; therefore, in all general matters, the law presumes the act did not intend to make any alteration, for if the parliament had that design, they would have expressed it in the act. (*Harbert's case*, 3 Rep. 116; also, *R. v. Bishop of London*, 1 Shaw, 455; *Hard.* 62; *Arthur v. Boxenham*, 11 Mod. 150.)

Construction to be according to common law.

If in the same act of parliament there be one clause which applies to a particular case, and another which is conceived in general terms, the former shall not restrain the signification of the latter. (*Per Buller, J., Andree v. Fletcher*, 2 T. R. 164.)

But where a general intention is expressed, and the act expresses also a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception. (*Per Best, C. J., Churchill v. Crease*, 5 Bing. 180; 2 Moor & P. 415; *R. v. Bishop of Armagh*, 8 Mod. 8; and see *Bac. Ab. Statutes* (I.).)

Where the words of a statute are doubtful, general usage may be called in to explain them; for *jus et norma loquendi*, is governed by usage; but, where they are clear, the usage of a particular place alone cannot control them. (*R. v. Hogg*, 1 T. R. 728; *Vaughan*, 169; *Bac. Ab. Statutes* (I.); *Id. Cald.* 266.)

Usage to explain.

Where a statute, expressive as to some points, is silent as to others, usage may well supply the defect, if not inconsistent with express directions of the statute. (*Magistrates of Dunbar v. Duchess of Roxburghe*, 3 Cl. & Fin. 335.)

If a word have a certain definite sense at common law, it shall be interpreted in that sense when used in a stat. (6 Mod. 143; 2 Inst. 736.)

If terms of art are used they are to be taken in their technical sense. Thus the expression "heirs of the body," conveys to a lawyer a precise idea as comprising in a legal sense only certain lineal descendants. (*Dur. on Stat.* 702.)

Technical words.

In construing acts of parliament, the court must take into consideration not only the language of the preamble, or of any particular clause, but of the whole act; and if in some of the enacting clauses expressions are found of more extensive import than in others, the court will give effect to those more extensive expressions, if upon view

Whole act to be considered.



### 7. Construction of Statutes.

Should be construed like a will.

Statute not always to be construed literally.

Doubtful words to be construed with reference to object of act.

Different part so construed as if possible to stand.

A saving, totally repugnant, void.

Repugnant proviso.

Saving clause.

Title of act.

The preamble to be considered.

of the whole act, it appears to have been the intention of the legislature that they should have effect. (*Doe v. Brandling*, 7 B. & C. 643; 1 M. & R. 600, S. C.; *Lincoln College case*, 3 Rep. 58.)

No strained construction should be placed upon a statute: it should be construed like a will. (*Butler and Baker's case*, 3 Rep. 25.)

Too much stress ought not to be laid on the literal meaning of a statute. Wherever it admits of two constructions, the spirit of it, and intent of the legislature, ought to be regarded in the construction thereof. Thus, the 13 Geo. 3, c. 84, s. 34, (now repealed by 3 Geo. 4, c. 126,) provided, amongst other exemptions from toll, "or for any horses or carriages which shall only cross any turnpike road, and shall not pass above one hundred yards thereon." A question arose, whether a carriage, which did not cross the road, but quitted it again on the same side on which it entered, was not liable to toll, although it did not pass the one hundred yards. The court held that it was not liable, observing, that the statute meant to exempt carriages making a very slight use of the road. (*Major v. Oxenham*, 5 Taunt. 340; *R. v. Morris*, 1 B. & Ad. 441; and now provided for by express words, in s. 32 of 3 Geo. 4, c. 126.)

Doubtful words should be construed with reference to the object and intentions of the act. (See *Jardine v. Lewis*, 9 B. & C. 548; *R. v. Hall*, 1 B. & C. 123; 2 D. & R. 241; and see, *per cur.*, *R. v. Pease*, 4 B. & Ad. 40.)

It has more than once been observed by the court, that the language of acts of parliament is not to be examined with a critical eye, but according to its plain and obvious meaning. If we can find expressions in a statute capable of an intelligible explanation, it is our duty to give effect to them, according to the obvious intention of the legislature, and not according to a critical and literal interpretation. (Per *Abbot, C. J.*, *R. v. Bellamy*, 2 D. & R. 727; 1 B. & C. 500.)

Where the legislature, in a very modern act of parliament, have used words of a plain and definite import, it is very dangerous to put upon them a construction, the effect of which will be to hold that the legislature did not mean that which they have expressed. (Per *Bayley, J.*, *R. v. Stoke Damerel*, 7 B. & C. 563; 1 M. & R. 458.)

One part of a statute must be so construed by another, that the whole may (if possible) stand: *ut res magis valeat, quam pereat*. But a saving, totally repugnant to the body of the act, is void. If, therefore, an act of parliament vests land in the king and his heirs, saving the right of all persons whatsoever; or vests the land of A. in the king, saving the right of A.; in either of these cases the saving is totally repugnant to the body of the statute, and (if good) would render the statute of no effect or operation; and, therefore, the saving is void, and the land vests absolutely in the king. (*The Case of Alton Woods*, 1 Rep. 47; 1 Bla. Com. 81.)

But it has been held, that a repugnant proviso is not void, but shall stand and be held a repeal of the purview, because it is said, it speaks the last intention of the lawgiver. (*Att. Gen. v. Chelsea Waterworks*, Fitzg. 195; *Bac. Ab. Stat.*)

A saving clause will only save that which is in *esse* at the time of the saving. (*Case of Alton Woods*, 1 Rep. 40, b.)

The title of a statute is no part of the law. (*R. v. Williams*, 1 W. Bla. 95.) But it may, it seems, be referred to in construing the statute. (See *Free v. Burgoyne*, 5 B. & Cres. 400; 2 Bligh. Rep. 78. N. S.; *R. v. Pierce*, 3 M. & Sel. 62; *Mayor of Leicester v. Burgess*, 5 B. & Ad. 250; 2 Nev. & M. 131; *sed vide Bac. Ab. Statutes* (I.); *Hard. 324; Lord Raym. 77.*)

The preamble is deemed true, and is a good means for collecting the intent, and may always assist in the solution of doubts. (*Crespigny v. Witternoon*, 4 T. R. 723; 1 Inst. 11; *Bac. Ab. Statutes* (I.)) But the preamble shall not restrain the operation of the enacting part of a

statute which is expressed in clear and unambiguous words: as, where the preamble reciteth only a particular inconvenience, this shall not hinder a subsequent enacting clause from being understood in that more general sense which the words would otherwise and of themselves import, so as to take in other inconveniences of the like kind, although not specified in the preamble. (*R. v. Athos*, 8 *Mod.* 144; 1 *P. Wms.* 320; *Lofft*, 782; *Patterson v. Bankes*, *Cowp.* 543; *Perkins v. Sewell*, 1 *W. Bla. Rep.* 659; *Wright v. Nuttall*, 10 *B. & C.* 492. See the rule laid down in 7 *B. & C.* 643; *Doe v. Brandling*.)

7. *Construction of Statutes.*

The enacting words of a statute may be carried beyond the mischief recited in the preamble, if such, upon a fair exposition of the statute, appear to have been the intention, and the words are sufficiently large. (*R. v. Pierce*, 3 *M. & Sel.* 62; and see *Halton v. Coce*, 1 *B. & Ad.* 538.)

All statutes *in pari materia* are to be construed as one law; (*Earl of Ailesbury v. Pattison*, 1 *Dougl.* 30; *Jones v. Smart*, 1 *T. R.* 53; *R. v. Inhabitants of Gwenop*, 3 *T. R.* 135;) and should be construed together. (2 *Lofft*, 398; *R. v. Conservators of River Tone*, 1 *B. & Ad.* 561; 4 *M. & Sel.* 210; *Bac. Ab. Statutes* (I.).)

Statutes in *pari materia*.

As if one statute prohibit the doing of a thing, and another statute afterwards be made whereby a forfeiture is inflicted upon the person doing that thing, both are to be considered as one statute. (*Stradling v. Morgan*, *Plowd.* 206.)

If it can be gathered from a subsequent statute *in pari materia* what meaning the legislature attached to the words of a former statute, this will amount to a legislative declaration of its meaning, and will govern the construction of the first statute. (*Morris v. Mellin*, 6 *B. & C.* 454; 9 *D. & R.* 503; and see 5 *B. & C.* 162; and *King v. Smith*, 4 *T. R.* 419.)

As to when a statute may be considered as an appendix to another act, see *Lane v. Bennett*, 1 *M. & W.* 72.

By express enactment the construction of statutes in certain particulars has been provided for. As,

By express enactment.

That in all cases where the kingdom of England, or that part of Great Britain called England, hath been or shall be mentioned in any act of parliament, the same shall from henceforth be deemed and taken to comprehend and include the dominion of Wales and town of Berwick-upon-Tweed. (20 *Geo.* 2, c. 42, s. 3.)

Wales—Berwick-on-Tweed.

That in all acts words importing the masculine gender shall be deemed and taken to include females, and the singular to include the plural, and the plural the singular, unless the contrary as to gender or number is expressly provided: and the word "month" to mean calendar month unless words be added showing lunar month to be intended: and "county" shall be held to mean also county of a town or of a city unless such extended meaning is expressly excluded by words: and the word "land" shall include messuages, tenements, and hereditaments, houses and buildings, of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure: and the words "oath," "swear," and "affidavit," shall include affirmation, declaration, affirming, and declaring, in the case of persons by law allowed to declare or affirm instead of swearing. (13 & 14 *Vict.* c. 21, s. 4.)

Section 5. That where any act repealing in whole or in part any former act is itself repealed, such last repeal shall not revive the act or provisions before repealed, unless words be added reviving such act or provisions.

Repeal not a revival.

Section 6. That whenever any act shall be made repealing in whole or in part any former act, and substituting some provision or provisions instead of the provision or provisions repealed, such provision or provisions so repealed shall remain in force until the substituted

Effect of repeal.

7. *Construction of Statutes.* provision or provisions shall come into operation by force of the last made act.

Sect. 7. That every act made after the [commencement of the session 1851] shall be deemed and taken to be a public act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such act.

Private statutes.

The construction of private acts of parliament is to be governed by the principles of common law, and applied to the subject in a manner analogous to the rules of interpretation in a private deed or conveyance. (*Eton College v. Winchester (Bishop)*, *Lofft*, 401.)

They ought not to have a liberal construction put on them. (*Threadneedle v. Lynam*, 2 *Mod.* 57; *Bac. Ab. Statutes* (I.).)

Statutes for public good to be construed liberally.

A statute made *pro bono publico*, shall be construed in such manner that it may as far as possible attain the end proposed. (*Pierce v. Hopper*, 1 *Stra.* 253, 258.) For which reason the *New River* water act was holden, although only the city of London be therein mentioned, to extend to places adjacent. (*New River Company v. Graves*, 2 *Vern.* 431; and see *R. v. Pease*, 1 *Nev. & M.* 690; 4 *B. & Ad.* 37.)

Remedial statutes to be construed liberally.

There are three points to be considered in the construction of all *remedial statutes*; the old law, the mischief, and the remedy: that is, how the common law stood at the making of the act; what the mischief was, for which the common law did not provide; and what remedy the parliament hath provided to cure this mischief. And it is the business of the judges so to construe the act as to suppress the mischief and advance the remedy, consistently with the fair construction of the act. (*Heydon's case*, 3 *Rep.* 7; *Co. Lit.* 11, 42; 1 *Bla. Com.* 81; *Johnes v. Johnes*, 3 *Dow*, 15; *Atcheson v. Everitt*, *Cowp.* 391, *S. P.*; *Stainford v. Sinclair*, 9 *Moore*, 379; 2 *Bing.* 193; *R. v. Hodnett*, 1 *T. R.* 96, 313.)

All cases within the same mischief.

So, in all cases within the same mischief, they shall be construed within the intent though it be not within the letter of the statute. (*Com. Dig. Parliament*, *R.* 13; *St. Peter's, York*, (*Dean and Chapter*) *v. Middleborough*, 2 *Y. & J.* 196.)

Thus it has been laid down that a statute may be extended by construction to *other cases* within the same mischief and occasion of the act, though not expressly within the same words. The statute, *Marlb.* 29, which gives remedy to the successor, *ad bonæ ecclesiæ repetenda*, extends to trespass for cutting down trees. (2 *Inst.* 152.) (For other instances see *Winchester's case*, 3 *Rep.* 4; 2 *Inst.* 111. *Bro. Parl. Pl.* 20.)

Or a statute may extend to other *persons* besides those expressly named—thus the stat. of *circumspecte agates*, which names only the Bishop of Norwich, has been always extended to other bishops. (*Dw. on Stat.* 721; see also *Plow.* 36; *Porter's case*, 1 *Rep.* 25; *Eyston v. Studd. Plow.* 467.)

Or to other *things*—thus uses were not within the stat. *de donis*, but are taken within the equity. (*Corbet's case*, 1 *Rep.* 88.)

Or to other *places*. (See *Ratcliffe's case*, 3 *Rep.* 39, and *Boyton's case*, 3 *Rep.* 44.)

So, a remedial stat. may extend to later provisions by subsequent statutes: thus a devise to a woman of land for term of her life or in tail, for her jointure and in satisfaction of dower, is a jointure within 27 *Hen.* 8, although land was not devisable till 32 *Hen.* 8. (*Dw. on Stat.* 724, and see *Vernon's case*, 4 *Rep.* 4.)

The 2 *Geo.* 2, c. 22, continued by the 29 *Geo.* 2, c. 28, expired 1st June, 1759; the 32 *Geo.* 2, c. 28, commenced 15th June, 1759; so there was a chasm of fourteen days. The court declared they would construe equitably, and that Trinity term, 1759, ought to be considered as the term in which such prisoners (as had been precluded by the expiration of the former act from completing their discharge

under it) were charged in execution, and therefore they had *Michaelmas* term for the first term next after their being charged in execution. (2 *B. M.* 901.)

7. *Construction of Statutes.*

And if the reason of the law be general though the provision is special, the words of the statute shall receive a general acceptation: thus the 5 Hen. 4, that none be imprisoned by any justice of the peace but in the common gaol, to the end that they might have their trial at the next gaol delivery or sessions of the peace, has been thought to extend to all other judges and justices. (2 *Inst.* 33.)

If reason of law general it shall receive a general acceptation.

But of late years an increasing inclination has been manifested to adhere more closely in the construction of statutes to the words of the act of parliament; and the result of modern decisions seems to be, that to bring a case within the statute, it should be not only within the mischief contemplated by the legislature, but also within the plain intelligible import of the act of parliament. (*Dw. on Stat.* 711; *R. v. Turvey*, 2 B. & A. 522; *Brandling v. Barrington*, 6 B. & C. 467; *Expte. Swift*, 3 Dow, 636.)

The general rule now adopted by the courts in the construction of statutes is to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.

Construction of statutes.

A *casus omisus* can in no case be supplied by a court of law; for that would be to make laws. (Per *Buller, J.*, *Jones v. Smart*, 1 T. R. 52.)

Casus omisus.

A case out of the mischief intended to be remedied by a statute shall be construed to be out of the purview, though it be within the words of the statute. (2 *Inst.* 386.)

A case out of mischief provided against.

But where the words of a statute go beyond the intention, it rests with the legislature to make an alteration. The duty of the court is only to construe and give effect to the provision. (*Nolley v. Buck*, 8 B. & C. 164.) "It is safer," said Mr. J. *Ashurst*, in *Jones v. Smart*, 1 T. R. 52, "to adopt what the legislature has actually said, than to suppose what they meant to say."

An act ought not to be construed so as to work an injustice. (*Sir J. Nedham's case*, 8 Rep. 136 a; *Towler v. Chatterton*, 6 Bing. 259; 3 M. & P. 619.)

No statute shall be construed in such a manner as to be inconvenient and against reason. (*Hughes v. Hughes*, *Carth.* 136; 1 *Inst.* 97.)

Not to be construed against reason.

By the 12 Car. 2, c. 17, all persons presented to benefices in the late times, who should conform as in the statute was directed, were to be confirmed therein, *notwithstanding any act or thing whatsoever*: yet it was holden, that the statute did not extend to the confirming of a person who had been simoniacally promoted. (*Crawley v. Phillips*, *Sid.* 232.)

*Penal Statutes* must be construed strictly. This rule is thought to have been followed rigidly when by the 1 Edw. 6, c. 12, it was enacted that those who are convicted of stealing horses should not have the benefit of clergy, and the judges conceived that this should not extend to him that should steal but one horse, and therefore procured a new act for that purpose in the following year, 2 & 3 Edw. 6, c. 33. (*Bac. Elem.* c. 12.) But Lord *Hale* thinks that the scruple of the judges did not merely depend upon the words being in the plural number, because no doubt had ever occurred respecting former statutes in the plural number; as, for instance, it was enacted by the 32 Hen. 8, c. 1, that no person convicted of burning *any dwelling-houses* should be admitted to clergy. But the reason of the difficulty in the case was, because the statute of 37 Hen. 8, c. 8, was expressly penned in the singular number, *If any man do steal any horse, mare, or filly*;

Penal statutes construed strictly.

7. *Construction of Statutes.*

and then this statute, thus varying the number, and at the same time expressly repealing all other exclusions of clergy introduced since the beginning of Hen. 8, it raised a doubt whether it were not intended by the legislature to restore clergy where only one horse was stolen. (2 H. P. C. 365.) So, by the 14 Geo. 2, c. 6, stealing sheep or other cattle was made felony, without benefit of clergy. But these general words, "or other cattle," being looked upon as much too loose to create a capital offence, the act was held to extend to nothing but mere sheep. Therefore, in the next sessions, it was found necessary to make another statute, 15 Geo. 2, c. 34, to extend the former to bulls, cows, oxen, steers, bullocks, heifers, calves, and lambs, by name.

The statute against maintenance shall be construed strictly. (*Com. Dig. Parliament, R. 20, 86 b.*)

The statute *de malefactoribus in parvis* was held not to extend to those in forests. (*Id.*; 21 Edw. 1, st. 2.)

So, the general words of a penal statute shall be restrained for the benefit of him against whom the penalty is inflicted.

So, where the 12 Geo. 2; c. 34, s. 2, directed that the sheriff should proclaim the order in council against offenders under that act, in two market towns, *near* the place where such offence was committed, the word *near* shall be taken to mean a reasonable vicinity, though not equivalent to *next*. (*R. v. Harvey, 1 Wils. 164; 1 Bl. 20.*)

But exposition ought not to be such as to elude the act.

But the exposition of a penal statute ought to be such, that the statute be not eluded. (2 Rol. 127; *Com. Dig. Parliament, R. 28*; and see *Bac. Ab. Statutes (J.)*.)

Yet penal statutes are taken strictly and literally only in the point of defining and setting down the *fact* and the *punishment*, and not generally "in words that are but circumstances and conveyances in the putting of the case." (*Dw. on Stat. 736.*)

Statute introducing capital punishment.

Rule for the interpretation of all criminal statutes.

Every statute which introduces a capital punishment must be construed strictly. (*R. v. Harvey, 1 Wils. 164.*)

The following is the important provision of the 7 & 8 Geo. 4, c. 28, s. 14, relative to the interpretation of all criminal statutes. The words of the enactment are—"that wherever this or any other statute relating to any offence, whether punishable upon indictment or summary conviction, in describing or referring to the offence or the subject-matter on or with respect to which it shall be committed, or the offender or the party affected or intended to be affected by the offence, hath used or shall use words importing the singular number or the masculine gender only, yet the statutes shall be understood to include several matters as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and whenever any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where such body shall be the party aggrieved."

Revenue and stamp acts.

Revenue and stamp acts are to be construed strictly. (Per Lord Tenterden, in *Tompkins v. Ashby, 6 B. & C. 541*; and see *Hubbard v. Johnson, 3 Taunt. 220.*)

Exemption from duties.

Statutes under which parties are made exempt from duties imposed by general acts should be construed strictly. (*Perchard v. Heywood, 8 T. R. 468.*)

Statute against common rights.

A statute imposing a charge on the public must be construed strictly. And where a special authority is delegated, by statute, to particular persons to take away a man's property and estate against his will, there it must be strictly pursued, and must appear to be so upon the face of the proceedings. (*R. v. Croke, Cowp. 26.*) And such an act must be construed strongly against the parties to whom that authority is given, and in favour of private property. (*Scales v. Pickering,*

4 *Bingh.* 448; 1 *Moore & P.* 195; and see *Dudley Canal Company v. Grazebrook*, 1 *B. & Ad.* 59.)

An enlarged construction must not be put thereon. (*Lofft*, 438; *Hull Dock Company v. La March*, 8 *B. & C.* 52; 2 *Man. & R.* 107; *Stowbridge Can. Comp.*, 2 *B. & Ad.* 792; *Fraser v. Swansea Can. Comp.*, 3 *Nev. & M.* 391; 1 *A. & E.* 354.)

By an act reciting that a railway between certain points would be of great public utility, and would materially assist the agricultural interest and the general traffic of the country, power was given to a company to make such railway according to a plan deposited with the clerk of the peace, from which they were not to deviate more than 100 yards. By a subsequent act the company, or persons authorised by them, were empowered to use locomotive engines upon the railway. The railway was made parallel and adjacent to an ancient highway, and in some places came within five yards of it. It did not appear whether or not the line could have been made to pass at a greater distance. The locomotive engines on the railway frightened the horses of persons using the highway as a carriage road. On indictment against the company for a nuisance, it was held, that this interference with the rights of the public must be taken to have been contemplated and sanctioned by the legislature, since the words of the statute authorising the use of the engines were unqualified, and the public benefit derived from the railway (whether it would have excused the alleged nuisance at common law or not), showed at least that there was nothing unreasonable in a clause of an act of parliament giving such unqualified authority. (*R. v. Pease*, 1 *Nev. & M.* 690; 4 *B. & Ad.* 30.)

In railway acts, the clauses imposing tolls or duties, if there be any ambiguity therein, are to be construed most strongly against the company and in favour of the public. (*Stockton and Darlington Railway Company v. Barret (in error)*, 3 *Scott, N. R.* 803; 2 *Railw. Cas.* 466 (affirming judgment of *C. P.*); 2 *Railw. Cas.* 443.)

An act of parliament authorising persons to repair and cleanse a navigable river, does not authorise them to make a passage to a new wharf on the river. (*Poathwicke v. Mason*, 2 *Chit.* 658; see *R. v. Morris*, 1 *B. & Ad.* 441.)

If an act of parliament gives to the lord of a manor the consuance of all pleas within his manor, he shall not have consuance where he himself is party; *iniquum est aliquam sue rei esse judicem.* (*Bonham's case*, 8 *Coke*, 118, a.)

Statutes against frauds are to be liberally and beneficially expounded. This may seem a contradiction to the rule, that penal statutes should be construed strictly; most statutes against frauds being in their consequences penal. But this difference is here to be taken: where the statute acts upon the offender, and inflicts a penalty, as the pillory or a fine, it is then to be taken strictly; but when the statute acts upon the offence, by setting aside the fraudulent transaction, here it is to be construed liberally. Upon this footing the statute of 13 *Eliz. c. 5*, which avoids all gifts of goods, &c. made to defraud creditors and others, was held to extend by the general words to a gift made to defraud the queen of a forfeiture. (*Twynne's case*, 3 *Rep.* 81.) This distinction was also recognised when it was held that the same words in a statute bear different interpretations, according to the nature of the suit or prosecution instituted upon them. As, by the 9 *Anne, c. 14*, the statute against gaming, now repealed, if any person shall lose at any time or sitting 10*l.*, and shall pay it to the winner, he may recover it back within three months; and if the loser does not, within that time, any other person may sue for it, and treble the value besides. An action was brought to recover back fourteen guineas, which had been won and paid after a continuance at play, except an interruption during dinner, and the court held the statute was reme-

Statutes against frauds construed liberally.

7. *Construction of Statutes.*
- Against customs.** dial, as far as it prevented the effects of gaming, without inflicting a penalty, and therefore, in this action, they considered it one time or sitting; but they said, if an action had been brought by a common informer for the penalty, they would have construed it strictly in favour of the defendant, and would have held that the money had been lost at two sittings. (*Bones v. Booth*, 2 *W. Bl. Rep.* 1226.)
- Affirmative words in a statute do not take away a former custom. (*Co. Litt.* 115, a; *Com. Dig. Parliament*, R. 24.) The statute 11 Geo. 4 & 1 Will. 4, c. 64, for permitting the general sale of beer by retail in England, does not supersede the custom of a borough, that no person shall carry on the trade of an alehouse-keeper therein who is not a burgess. (*Mayor, Bailiffs, and Burgesses of the borough of Leicester v. Burgess*, 2 *Nev. & M.* 131; 5 *B. & Ad.* 246; and see *Simson v. Moss*, 2 *B. & Ad.* 543.)
- Against common law rights.** Statutes restrictive of the common law should receive a restrictive construction. (*Ash v. Abdy*, 3 *Swanst.* 664.)
- But if a statute be only declaratory of the common law, it shall extend to others besides the persons or things named: thus where the Q. B. only is mentioned, the provision was held to extend to the other principal courts. (*Dw. on Stat.* 713; 2 *Inst.* 256.)
- In general the rule, *expressio unius est exclusio alterius*, holds good: thus where coal mines were made rateable by the express words of 43 Eliz. c. 2, it was held that all other mines were excluded. (*R. v. Cunningham*, 5 *East*, 478.)
- Giving away property of subject—as the insolvent act.** It has been holden that a statute discharging insolvent debtors ought to be construed strictly, because it gives away the property of some subject. Et per Holt, C. J., “Let a statute be ever so charitable, if it give away the property of a subject, it ought to be construed strictly.” (*Calladay v. Pilkington*, 12 *Mod.* 513.)
- A statute shall never have an equitable construction in order to overthrow an estate. (*Wroth v. the Countess of Sussex*, 3 *Leon.* 133.)
- Statutes giving costs.** All statutes that give costs are to be taken strictly. (*Cone v. Bowles*, 1 *Salk.* 205; *R. v. Glastonby*, *C. T. Hardw.* 357; and see *R. v. York*, (*Justices of*), 3 *Nev. & M.* 685; 1 *Ad. & E.* 828; *Bac. Ab. Statutes* (I).)
- Registry acts.** The ship registry acts, so far as they apply to defeat titles and to create forfeitures, are to be construed strictly as penal, and not liberally as remedial laws. (*Hubbard v. Johnston*, 3 *Taunt.* 177.)
- Creating new jurisdiction.** A statute creating a new jurisdiction ought to be construed strictly. (*Reeve v. Hopper*, *Str.* 258, 260; 10 *Rep.* 73.)
- It has therefore been holden, that the 6 Geo. 1, c. 21, which gives the commissioners of excise a jurisdiction to condemn in a summary way certain goods therein mentioned, ought to be construed strictly; because it breaks in upon the ancient jurisdiction of the court of Exchequer. (*Warwick v. White*, *Bunb.* 106.)
- Special power to one person only to be pursued.** Regularly, where an act of parliament giveth a power or interest to one person certain, by this express designation of one, all others are excluded. (11 *Rep.* 59, 64.)
- Special authority.** Where persons, as justices, commissioners, &c., have special authority by statute, they have none but what is under such statute, all other acts being void. (*R. v. Lindale*, 1 *Burr.* 445.)
- Where statute makes an instrument void.** If it be doubtful whether a statute declaring an act, instrument, or contract, void, makes it voidable only, another clause in the same statute, imposing a penalty on such act, instrument, or contract, is a clear test that it is, *ipso facto*, void. (*Gye v. Felton*, 4 *Taunt.* 876.)
- When good in part, though bad in rest.** Where a clause void by statute law is mixed up with good matter, entirely independent of it, the good part stands, the rest is void. (*Horn v. Syngé*, 15 *East*, 440.)
- But if the part which is good depends upon that which is bad, the whole instrument is void. (*Biddell v. Leeder*, 1 *B. & C.* 327; 2 *D. & R.* 449.)

But this rule does not apply to different and independent covenants in the same instrument which may be good in part and bad in part. *(Morvys v. Leake, 8 T. R. 411.)*

7. *Construction of Statutes.*

Where a statute points out the manner in which a canal company shall convey lands, and enacts that "every such conveyance shall be valid," it does not cure any defect in the title of lands so conveyed. *(Ward v. Scott, 3 Campb. 284.)*

Where statute does not cure defective conveyance.

Where an act of parliament alters the service, tenure, or interest in the land in prejudice of the lord or tenant, there the general words of such act will not extend to copyholds; but if an act is made for the public good, and no prejudice accrues to the lord or tenant, there copyholds are within the purview of it. *(Heydon's case, 3 Rep. 7.)*

Copyholds, when included.

If, under an act of parliament, the property in goods, chattels, furniture, clothing, and debts, is vested in certain directors of the poor, yet the property in money and securities for money, is not vested in them by those words. *(R. v. Beacall, and R. v. Willings, 1 C. & P. 454.)*

Property not vested within words of act.

Statutes conferring privileges on the members of the universities mean only the members of the universities of Oxford and Cambridge, unless otherwise expressed. *(Jones v. Smart, 1 T. R. 49.)*

Universities

Some statutes are only directory, others are compulsory, that is, they are either discretionary or imperative as to what they enact.

Imperative or directory.

By the statute 17 Geo. 2, c. 38; s. 2, "it shall and may be lawful" for the justices to commit an outgoing churchwarden or overseer who neglects or refuses to account. This renders it discretionary only in the justices to commit. *(R. v. Justices of Norfolk, 1 Nev. & M. 67; 4 B. & Ad. 238.)*

The 13 & 14 Car. 2, c. 12, enacts, that the overseers may make a rate to reimburse the constables: this is construed they shall: for they are compellable so to do. *(R. v. Barlow, 2 Salk. 609.)*

So in the stat. 8 & 9 Will. 3, c. 11, s. 8, the words "may assign," and "may suggest" breaches, are held compulsory on the plaintiff to proceed according to the statute. *(5 T. R. 636; 2 Wils. 577.)*

The words "shall and may" are only imperative where the clause in a statute is for the public benefit. *(R. v. Flockwold Inclosure Commissioners, 2 Chit. 251; R. v. The Steward of Havering Atte-Bower, 5 B. & Al. 691; 2 D. & R. 176 n.)*

But if from the whole act it appears the legislature did not intend the words shall and may as imperative, they cannot be so construed—as where an act directed it should and might be lawful for trustees to do an act if it should be deemed proper, &c., it was held the enactment was merely directory. *(De Beauvoir v. Welch, 7 B. & C. 226; 1 M. & R. 81.)*

In *R. v. the Bailiffs of Eye*, 4 B. & Al. 271; the words "it shall be lawful" came under consideration as occurring in one of their bye-laws; on which Abbott, C. J., observed, "the words are, 'that it shall be lawful for the bailiffs &c. to admit.'" Those words clearly give to the bailiffs a discretionary power to admit the persons who have the qualifications therein mentioned, but they by no means make it imperative on them so to do. (See also, *Allen v. Waldgrave*, 2 Moore, 625; 8 Taunt. 566.)

A provision in an act of parliament that "it should be lawful" for a canal company to weigh sunken vessels under certain circumstances, was held compulsory on the company. *(Parnaby v. Doncaster Canal Company, 3 Nev. & P. 523.)*

The 43 Geo. 3, c. 59, s. 2, enacts, that where a county bridge shall be narrow and incommodious, "it shall and may be lawful" to and for the justices at quarter sessions to order and direct such bridge to be widened, &c. Held that the act gave the justices a discretion in the matter. *(In re the Newport Bridge, 29 L. J. M. C. 52.)*

A clause in an act of parliament fixing the time of electing a parish



7. *Construction of Statutes.*

officer, &c., is in general construed as *directory* only. (See *R. v. Mayor of Norwich*, 1 *B. & Ad.* 310; *R. v. Sparrow*, 2 *Str.* 1123; *R. v. Denbighshire*, 4 *East*, 142.)

And it has often been held where an act orders any thing to be performed by a public body, and merely points out the specific time when it is to be done, that such act is not imperative, but directory, and may be complied with in a reasonable time after the period prescribed. (See *per Littledale, J.*, in *Smith v. Jones*, 1 *B. & Ad.* 334.)

The provision of the 52 Geo. 3, c. 93, that convictions for sporting without a game certificate shall be entered and registered with the commissioners of taxes of the district, and returned to the clerk of the peace, are directory only. (See *Mason v. Barker*, 1 *Car. & Kir.* 101.)

Negative words will make a statute imperative; words in the affirmative are in general only directory. (*R. v. Leicester*, "*Justices*," 9 *D. & Ry.* 772; 7 *B. & C.* 12.)

For other instances of directory clauses see *R. v. Woolstanton*, 1 *Bott.* 610; *Davison v. Gill*, 1 *East*, 64; *R. v. Loxdale*, 1 *Burr.* 447; *R. v. Birmingham*, 8 *B. & C.* 29.

An act of the 51 Geo. 3, for making the *Bridgewater* and *Taunton* canal, after reciting that the making of that canal would be very prejudicial to the tolls authorised to be levied and collected from the *Tone* navigation, authorised and required the company of proprietors of the canal, within three calendar months, to contract and agree with the conservators of the river *Tone* navigation and other persons, proprietors of shares, or parts of shares or otherwise interested therein, for the absolute purchase of their several and respective estates, rights, and interests in and to the same, and also to contract and agree with the overseers of the poor for the time being of the town of *Taunton*, and the several parishes of *Taunton*, *St. Mary Magdalen*, and *Taunton St. James*, for the absolute purchase of the respective estates, rights and interests of the said town and parishes, under and by virtue of the said therein recited act.—The 51 Geo. 3 was repealed by the 5 Geo. 4.—Held by *Bayley* and *Littledale*, justices, that the words, within three calendar months, applied to both branches of the clause, and that the canal company therefore were bound to have contracted within that period with the overseers of the poor of the parishes of *Taunton*; and not having done so, they could not afterwards compel them to sell their interest; and by *Parke, J.*, that whether the right to purchase that interest was limited to three months or not, at all events it was gone when the 51 Geo. 3 was repealed. (*Conservators of River Tone v. Ash*, 10 *B. & C.* 349.)

Reddendo singula singulis.

General words in an act of parliament are often, where the sense requires it, in furtherance of the intention, to be taken distributively *reddendo singula singulis*: thus, in the construction of the words, "for money or other good consideration paid or given," in the stat. 13 Eliz. c. 5, "paid" is referred to money, and "given" to consideration. (*Dw. on Stat.* 716; and see 7 *B. & C.* 570.)

An expression which has precedence in the order of words must be taken to have been used with reference to things or persons of a higher order or superior rank than expressed by words that follow. Thus, where by the London tithe act the houses of "*magnates*," noblemen and noblewomen are exempt, it was held that magnates coming first, must mean persons superior to noblemen and women, and therefore that a dean was not exempted. (*Warden of St. Paul's v. the Dean*, 4 *Price*, 65.)

Words of relation "such."

General words may be limited by the relative "such" to a particular description of a thing contained in a preceding section. Thus, where the 3 Geo. 4, c. 39, makes warrants of attorney given under particular circumstances void against the assignees of a bankrupt, and the fourth section requires the defeasance of "such warrant of attorney" to be written on the paper on which the instrument itself is written; this has been twice held to apply only to such warrants of attorney as fall

within the former sections of the act. (*Morris v. Mellor*, 6 B. & C. 7. *Construction of Statutes.*)  
 446; *Bennett v. Daniel*, 10 B. & C. 500.)

The stat. 9 Anne, c. 20, s. 4, giving power to private persons to ex- Words ejusdem  
 hibit *quo warranto* informations for the usurping of offices, relates only generis.  
 to offices in cities, towns corporate, boroughs, and "places," such  
 places being places *ejusdem generis* with those previously named. (*R.*  
*v. Wallis*, 5 T. R. 375; and see as to construing words *ejusdem generis*,  
*Sandiman v. Breach*, 7 B. & C. 96; 9 D. & R. 796, *Lowther v. Radnor*  
*(Earl)*, 8 East, 113; *Hare v. Horton*, 5 B. & Ad. 715; 2 Nev. & M.  
 428.)

A statute which treats of things or persons of an inferior rank, can- General words  
 not by any general words be extended to those of a superior. So, a treating of infe-  
 statute treating of "deans, prebendaries, parsons, vicars, and others riors do not ex-  
 having spiritual promotion," is held not to extend to bishops, though tend to superiors.  
 they have spiritual promotion, deans being the highest persons named,  
 and bishops being of a still higher order. (*Canterbury's case*, 2 Rep. 46;  
*Hard.* 442.) This construction must be presumed to be most conform-  
 able to the intention of the legislature.

Where a statute mentions inferior conveyances, the subsequent words, "by any other means," cannot be intended of an act of parlia-  
 ment, which is the highest manner of conveyance that can be;  
 and, therefore, the makers of the act would have put that in the be-  
 ginning, and not in the end, after the inferior conveyances, if they  
 had intended to extend the act thereunto. (*Archbishop of Canterbury's*  
*case*, 2 Rep. 46 b.; *Copland v. Powell*, 1 Bing. 373; 8 Moore, 400.)

Where a statute speaks of indictments to be taken before justices of  
 the peace, or others having power to take indictments, it shall be  
 understood only of other inferior courts, and not of the King's Bench,  
 or other courts at Westminster. (*Canterbury's case*, 2 Rep. 46; 2 Haw.  
 c. 27, s. 124.)

Where a statute directs a penalty to be recovered in any court of Court of record.  
 record, this shall not be intended of the quarter sessions, unless it be  
 specially named in such statute; but only of the courts of record at  
 Westminster. (6 Rep. 19, 20; 2 Hale, 29, 30.)

On the other hand, it seems that, if a statute names superiors, it But general words  
 includes inferiors. As, if a statute makes the securities given by the treating of supe-  
 sureties of the farmers of the excise to be exempted out of the act of riors sometimes  
 oblivion, *à fortiori*, the securities of the farmers themselves shall be include inferiors  
 exempted. (*R. T. Hard.* 424.)

Where the moiety of a penalty is given by statute to the treasurer  
 of a county, riding, or division, the word "division" does not apply  
 to small districts, such as the cinque-port of Seaford, in Sussex, but  
 must be construed with reference to county, and riding, and means  
 something analogous to them. (*Evans, q. t., v. Stevens*, 4 T. R.  
 224, 459.)

Neither can it be applied to the different parts of a county, in which  
 the magistrates act under one general commission, but for the con-  
 venience of the county adjourn the quarter sessions from one part of  
 it to another, and appoint a separate treasurer for each. (*Id.*)

In general, nothing but express negative words will take away the Express words  
 jurisdiction of the Court of Queen's Bench. (See *R. v. Abbott, Douglas*, to take away juris-  
 553, n. 1; *R. v. Fell*, 1 B. & Ad. 380.) diction of superior  
 courts.

Nor can the rights of the crown be taken away by doubtful words Or bar the crown.  
 or ambiguous expressions, but only by express terms. Thus, general  
 words taking away the *certiorari* will not take it away at the instance  
 of the crown unless there be some words in the act to show that the  
 legislature intended that the crown should be barred. (*R. v. Allen*,  
 15 East, 340.)

The following words and phrases have been brought at various Received sense of  
 times under the consideration of the courts. words.

7. Construction  
of Statutes.

"And."

"And" may be relative as well as copulative; as where R. devised 100 sheep and 10 bullocks and 10*l.* quarterly—the second "and" in the sentence disjoins and severs the rent from the sheep and bullocks. (8 Rep. 85; *Dw. on stat.* 772.)

"And" may sometimes be read as if it were "or;" thus, where an act of parliament provided that no more than one toll should be demanded from persons passing or repassing the same day with the same "horses, cattle, beasts and carriages," it was held that this "and" was disjunctive and distributive, and therefore that the same carriage repassing, though drawn by different horses, was exempt from toll. (*Waterhouse v. Keen*, 6 D. & Ry. 257, misreported 4 B. & C. 200.)

"Anything in this act notwithstanding."

"Anything in this act notwithstanding" corresponds precisely with the words in the second saying of the Stat. of Uses, 27 Hen. 8, c. 10, "as if this act had not been made." (7 Rep. pp. 2, 20.)

Expressions of time.

As to the construction of expressions of time, such as "immediately," "forthwith," and the like, see "*Time*."

"Inhabitants."

The word "inhabitants" has no definite legal meaning, and must be construed according to the subject-matter and context of the statute or instrument in which it is used.

Thus the 11 Geo. 3, c. 29, which rendered "substantial inhabitants" of the wards of London eligible to the office of collector of the ward rates, applies to resident inhabitants only. (*Downe v. Martyr*, 2 M. & R. 98; 8 B. & C. 62.)

"Near."

The word "near" in a penal case must be construed strictly, and is not equivalent to the word "next." (*R. v. Harvey*, 1 W. Bl. 20.)

"From and to."

"From and to" do not necessarily exclude the place named. (*R. v. Knight*, 7 B. & C. 413.) In 40 Geo. 3, c. 50, is an instance of these words being inclusive as to time. (*R. v. Stevens & Agnew*, 5 East, 256, n. (a).)

For the interpretation of several words not generally occurring in acts of parliament, see *Dw. on stat.* 771—779.

Enactments in statute itself for its interpretation.

Recent statutes frequently contain sections which most minutely supply interpretations of words and terms therein, such as in the statutes relative to saving banks, friendly societies, lunatics, watching and lighting parishes.

Explanatory statutes.

Explanatory statutes should not be construed by any strained sense against the letter of the act; for, if any such exposition should be made, there would be no end of expounding. (*Butler and Baker's case*, 3 Rep. 25.) They ought to be construed beneficially.

Conflicting decisions on construction.

Where there are conflicting decisions upon the construction of a statute, the court must refer to that which ought to be the source of all such decisions; that is, the words of the statute itself. (*Per* *Ld. Ellenborough*, *R. v. Inhabitants of Leek Wootton*, 16 East, 122.)

The judges are to be the construers.

The power of construing a statute is in the judges of the temporal courts, who, in cases of doubtful construction, are to mould them according to reason and convenience, to the best use. (*Sheffield v. Ratcliffe*, *Hob.* 346; *Plowd.* 109; *Heydon's case*, 3 Rep. 7.) And that the courts of common law are intrusted with the exposition of statutes. (See *Gould v. Gapper*, 5 East, 370; 1 *Smith*, 528, S. C.; see further, *Bac. Ab. Statutes* (H).)

Effect of wrong construction.

It seems that, if the weight of authority be in construing an act of parliament one way, however wrong that way may be, the courts are bound by it. (See *Booth v. Ibbotson*, 1 Y. & J. 360; 1 *Bl. Com.* 91.)

## VIII. Repeal of Statute, what shall be, and its Effect.

Repeal of a statute, what shall be

We have seen how long a statute remains in force, *ante*, sect. 4.

A statute may be repealed by the express words of a subsequent statute, or by implication.

The bare recital of a statute is not sufficient to repeal the positive provisions of a former statute, without a clause of repeal. (*Dore v. Gray*, 2 T. R. 365.)

A statute cannot be repealed by *nonuser*. (*White v. Boot*, 2 T. R. 275.)

Where the words of an act of parliament are plain, it cannot be repealed by *nonuser*; yet, where there has been a series of practice without any exception, it goes a great way to explain the act where there is any ambiguity. (*Per Lord Kenyon, C. J., Leigh v. Kent*, 3 T. R. 364.)

Where two acts of parliament come into operation on the same day, and are repugnant, the one which last received the royal assent virtually repeals the other. (*R. v. Middlesex*, 1 Dowl. 116.)

Where the common law and a statute differ, the common law gives place to the statute; and an old statute gives place to a new one; and this upon a general principle of universal law, that "*leges posteriores priores contrarias abrogant*;" consonant to which it was laid down by a law of the twelve tables at Rome, that, "*quod populus postremum jussit, id jus ratum esto*." (1 Bla. Com. 89; *Bac. Ab. Statutes* (D).)

Common law gives place to statute, and an old to a new one.

But this is to be understood only when the latter statute is couched in negative terms, or where its matter is so clearly repugnant, that it necessarily implies a negative. As, if a former act says that a juror upon such a trial shall have 20*l.* a year, and a new statute afterwards enacts that he shall have twenty marks; here the latter statute, though it does not express, yet necessarily implies a negative, and virtually repeals the former; for if twenty marks be made qualification sufficient, the former statute, which requires 20*l.*, is at an end. (*Jenk. Cent.* 2, 73; *Owen v. Saunders*, 1 *Ld. Raym.* 160.)

The stat. 13 Geo. 2, c. 28, s. 5, exempting generally from the impress service any harpooner, &c., or seaman in the Greenland fishery trade, is impliedly repealed by the 26 Geo. 3, c. 41, s. 17, which exempts any harpooner, &c., whose name shall be inserted in a list required to be delivered on oath, &c.; and which also exempts any seaman entered on board any ship intended to proceed on the said fishery in the following season, whose name shall be inserted in a list, &c., and who shall give security, &c.; for the latter statute superadds the insertion of the seaman's name in such list as a condition precedent to the exemption. (*Ex parte Carruthers*, 9 *East's R.* 4.)

So, the 43 Eliz. c. 2, s. 6, which gives an appeal without limitation as to time against overseers' accounts, is virtually repealed by the 17 Geo. 2, c. 38, s. 4, which requires that the appeal shall be to the next general quarter sessions after allowance of the accounts. (*R. v. Justices of Worcestershire*, 5 *M. & Sel.* 457; and see 1 *Price*, 439.)

But, if both acts be merely affirmative, and the substance such that both may stand together, here the latter does not repeal the former, but they shall both have a concurrent efficacy.

The law does not favour a repeal by implication, nor is it to be allowed unless the repugnancy be quite plain: for as such repeal carries with it a reflection upon the wisdom of the former parliament, it has ever been confined to the repealing as little as possible of the preceding statute. (11 *Rep.* 63; *Foster's case*, 1 *Roll. R.* 88; 10 *Mod.* 118; see *R. v. Inhabitants of Idle*, 2 *Barn. & Al.* 149; *R. v. Drake*, 6 *M. & Sel.* 116; *Goldson v. Buck*, 15 *East*, 372.)

If, by a former law, an offence be indictable at the quarter sessions, and a latter law makes the same offence indictable at the assizes, here the jurisdiction of the sessions is not taken away, but both have a concurrent jurisdiction, and the offender may be prosecuted at either; unless the new statute subjoins express negative words: as, that the offence shall be indictable at the assizes, and not elsewhere. (*Foster's case*, 11 *Rep.* 63; *Com. Dig. Parliament*, R. 9.)

But, where affirmative words in sense contain a negative,—as, where

8. *Repeal of Statute, what shall be, and its Effect.*

8. *Repeal of Statute, what shall be, and its Effect.*

a new ordinance is made which directs the form or order of the proceeding, it shall be otherwise, (*Pl. Com.* 113.)

Where a new act does not continue the old mode enacted in a prior act, but substitutes a new mode, the substitution of the new mode supersedes, with all its consequences, the old. A variation in the mode implies a change in the intention of the legislature. Had it been intended to continue the old system, the use of the old language, and the continuance of the old mode, would naturally have been expected. Where new language is introduced, and a new mode adopted, it must be supposed a new system was intended. (See, *per Bayley J.*, *Fearnley v. Morley*, 5 B. & C. 30; 7 D. & R. 832; *Gray v. Shilling*, 2 B. & B. 3; 4 Moore, 371.)

But subsequent statutes, which add accumulative penalties, and institute new methods of proceeding, do not repeal former penalties and methods of proceeding ordained by preceding statutes without negative words. Nor hath a later act of parliament ever been construed to repeal a prior act, unless there be a contrariety or repugnancy in them, or at least some notice taken in the later law of the preceding one, so as to indicate an intention in the law-makers to repeal it. (*Cowp.* 297; 2 Atk. 975; *Sharp v. Warren*, 6 Price, 131.)

Clause in act extending it to other acts.

In the construction of a general clause in a new act introducing new provisions and creating new liabilities, that the powers, *provisions*, exemptions, penalties, forfeitures, payments, remedies, matters, and things contained in a former act, relating to the same subject, except as varied by the present statute, should be as effectual for carrying the same into execution as if re-enacted; where the former act took away the right of *certiorari*, it has been held that such right was taken away by the new act. (*R. v. Fell*, 1 B. & Ad. 380.)

New act does not repeal old, where it is not intended to do so.

Where the intention appears that the subsequent act shall not have such an operation, though the words, taken strictly and grammatically, would repeal a former act, the courts hold that they ought not to receive such a construction. (See *Williams v. Pritchard*, 4 T. R. 2.)

Affirmative words do not take away common law.

Affirmative words in an act of parliament, without any negative, express or implied, do not take away the common law. (*Pl. Com.* 112; 2 Inst. 200.)

Where, by the 1 Eliz. c. 2, a minister who does not read the common prayer shall lose the profits of his benefice for the first offence, and being convicted, &c., for a second offence, shall be deprived; yet he might be deprived by the high commission erected by the power of the common law for the first offence, without a conviction, &c., or the methods directed by the statute. (5 Rep. 5 b.; *De Jur. Eccl.*; *Bac. Ab. Statutes* (G.).)

So general words do not take away a particular privilege or benefit: as the stat. W. 2, c. 18, which gives an *elegit*, does not take away the privilege an infant has, that he shall not be sued during his non-age, if an *elegit* be against the heir of a conusor, being an infant. (2 Inst. 395.)

A power in an act of parliament to continue private ways does not alter the liability of parties to repair them. (*Anon. Lofft.* 465; *Co. Lit.* 115, a.)

Nor repeal former act.

Affirmative words in an act of parliament do not repeal the provisions of a former act, unless there be some obvious inconsistency between the enactments. (*Dakins v. Seaman*, 9 Mee. & W. 777.)

Act lately made within equity of old act.

An act lately made may be within the equity of an act made long since. (See *Vernon's case*, 4 Rep. 1.)

A statute extends to a provision made by a subsequent act.

A statute extends to a provision made by a subsequent statute. Therefore, a statute shall be extended to cases provided by a subsequent statute; as, if extensors value goods too high, upon the stat. (*Acton Burnel*), 13 Edw. 1, they shall take them at the same price as was provided by the stat. (*de Merc.*) 11 Edw. 1. (*Hard.* 214.)

The stat. (*M. Ch.* 9.) Hen. 3, c. 9, which says "*omnes barones de*

*quinque portibus habeant omnes libertates, et consuetudines suas,*" shall be restrained to such liberties as are not taken away by another branch of the same statute; and therefore they shall not hold *placita coronæ*. (2 *Inst.* 31.)

8. *Repeal of Statute, what shall be, and its Effect.*

A statute made in affirmance of the common law extends to all future times. (2 *Inst.* 236.)

If a statute, before perpetual, be continued by an affirmative statute, for a limited time, this does not amount to a repeal thereof at the end of that time. (*Raym.* 397; *Anon. Hob.* 215.)

Perpetual statute continued by another for a limited time.

If a statute repeals another, and was itself repealed afterwards, the first statute was thereby revived, without any formal words for that purpose. (*Vin. Ab. Statutes*, E.) When the statutes of the 26 and 35 Hen. 8, declaring the king to be the supreme head of the church, were repealed by a statute, 1 & 2 P. & M., and this latter statute was afterwards repealed by an act of 1 Eliz., there needed not any express words of revival in Queen Elizabeth's statute, but these acts of King Henry were impliedly and virtually revived. (4 *Inst.* 325, but now, *ante*, sec. 7, *contra*, 13 & 14 Vict. c. 21, s. 5.)

Where repealing statute repealed, the first statute revived.

But if a statute be repealed by several acts, a repeal of one act, and not of all, does not revive the first statute. (*Case of a Committee concerning Bishops*, 12 *Rep.* 8.)

Where a statute professes to repeal absolutely a prior law, and substitutes other provisions on the same subject, which are limited to continue only till a certain time, the prior law does not revive after the repealing statute is spent, unless the intention of the legislature to that effect be expressed. (*Warren v. Windle*, 3 *East*, 205.)

No proceedings can be pursued under a repealed statute, though commenced before the repeal, unless by special exception (*Miller's case*, 3 *Wils.* 480; 1 *W. Bla.* 451), and no proceeding begun before can be continued after repeal, although the repealing statute varies the enactment only in form, for in this respect there is no valid distinction between matters of form and substance. (*Reg. v. Inh. of Denton*, 21 *L. J. M. C.* 207.)

The effect of repealing a statute is well illustrated by the 12 & 13 Vict. c. 106; for by the first section the prior statutes were repealed, except as to any penalty for any offences committed; and it was held, that a bankrupt could not after that statute be prosecuted for an offence under the previous statutes, *e. g.*, for not surrendering to a fiat. (*R. v. Swann*, 4 *Cox's C. C.* 108.)

Effect of repeal.

Where a statute is incorporated by reference in a subsequent statute, and the former statute is then repealed, and new provisions made, such of the enactments in the former as are not inconsistent with the repealing statute still remain in force, because the effect of the incorporation is the same as if these enactments had been actually written and printed as part of the incorporating statute. (See *R. v. Merionethshire*, 6 *Q. B.* 343; 13 *L. J.* 158, *M. C.*; *R. v. Breconshire*, 18 *L. J.* 123, *M. C.*) Thus the County Rates Act, 55 Geo. 3, c. 51, prescribes three months as the limitation for actions, and the 5 & 6 Vict. c. 97, s. 5, prescribes two years as the period within which actions are to be brought for anything done under a local and personal act; and it was held, that under the 8 & 9 Vict. c. 21, as to rates in the county of Lancaster, which contained a provision that all the powers and provisions relating to county rates should apply to rates under that act, the period of limitation was three months, and not two years. (*Boden v. Smith*, 18 *L. J.* 120, *C. P.*; 13 *Jur.* 428.) See *ante*, sect. 6, 13 & 14 Vict. c. 21 as to continuation of repealed acts by acts substituting provisions.

Upon incorporated statutes.

Where an act of parliament directs a mode of procedure to be adopted as contained in a former act, the repeal of such act does not operate to repeal the procedure directed, which is to be considered as incorporated in the latter act. (*Reg. v. Stock*, 3 *Nev. & Per.* 420; 8 *A. & E.* 405.)

8. *Repeal of Statute, what shall be, and its Effect.*

Where the law is altered by statute pending an action, the law as it existed when the action was commenced must decide the rights of the parties, unless the legislature, by the language used, show a clear intention to vary the mutual relation of the parties. (*Hitchcock v. May*, 6 A. & E. 943; 2 Nev. & P. 72; see *R. v. Mawgan*, in *Meneage*, (Inhab.) 8 A. & E. 496.)

By the 39 Geo. 3, c. 79, certain places are declared to be disorderly within the meaning of the 36 Geo. 3, c. 8; and a penalty is attached to certain offences committed in those places. Those offences are still punishable under the former act, although the latter was only passed for a limited period. (*Ex parte Higginbotham*, 9 Dowl. 200.)

A contract declared by a statute to be illegal, is not made good by a subsequent repeal of the statute. (*Jacques v. Wittey*, 1 H. Bl. 65.)

When an act of parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed. (*Per Lord Tenterden*, C. J., 9 B. & C. 41.)

In March, 1825, a trader committed an act of bankruptcy, upon which a commission might have issued under the statutes relating to bankrupts then in force. On the 1st of May those statutes were repealed; on the 2nd of May the repealing act was repealed and the former acts thereby revived. In July a commission of bankrupt issued: it was held that it was supported by the act of bankruptcy committed in March. (*Phillips v. Hopwood*, 10 B. & C. 39; and see *Maggs v. Hunt*, 4 Bingh. 212; *Hewson v. Heard*, 9 B. & C. 754.)

### IX. How Disobedience to a Statute may be punished.

How far an indictment will lie, where another method of prosecution is appointed.

Where a statute makes a new offence, which was no way prohibited by the common law, and appoints a particular manner of proceeding against the offender, as by a commitment, or action of debt, or information, without mentioning an indictment, it seems to be settled at this day, that it will not maintain an indictment; because the mentioning the other methods of proceeding only seems impliedly to exclude that of indictment: yet it hath been adjudged that if such statute gave a recovery by action of debt, bill, plaint, information, or otherwise, it authorises a proceeding by way of indictment. (2 Haw. c. 25, s. 4.)

And if there be a prohibitory clause in the act, the offender may be indicted upon the prohibitory clause, notwithstanding the penalty; but otherwise it is, where the act is not prohibitory, but only inflicts the forfeiture, and specifies the remedy. (2 Hale, 171; *R. v. Wright*, 1 Burr. 544.)

Disobedience to is misdemeanor

In *R. v. Buchanan* (8 Q. B. 887), Lord Denman, C. J., said, "Wherever a person does an act which a statute, on public grounds, has prohibited generally, he is liable to an indictment. I quite agree that where, in the clause containing the prohibition, a particular mode of enforcing the prohibition is prescribed, and the offence is new, that mode only can be pursued. The rule is then as if the statute had simply declared that the party doing the act was liable to the particular punishment. But where there is a distinct absolute prohibition, the act is indictable." In the particular instance the indictment was for practising as an attorney without being certificated.

But where the offence was antecedently punishable by a common law proceeding, and a statute prescribes a particular remedy by a summary proceeding, there either method may be pursued, and the prosecutor is at liberty to proceed either at common law or in the method prescribed by the statute: because in that case the sanction is cumulative, and doth not exclude the common law proceeding. (*R.*

*v. Robinson*, 2 Burr. 803; *Sharp v. Warren*, 6 Price, 131; *R. v. Carlile*, 3 B. & Al. 161.)

But every contempt of a statute is indictable where no other punishment is limited. (1 *Haw. c. 22, s. 5*; see "*Indictment*,")

And wheresoever an act of parliament doth generally prohibit anything, the party grieved shall not only have his action for his private relief, but the offender shall be punished at the king's suit, for the contempt of the law. (2 *Inst.* 163.)

And when a new offence is created by one clause of an act, and a penalty annexed by a separate and substantive clause, a prosecutor may indict on the clause creating the offence, and is not obliged to sue for the penalty. (*R. v. Harris*, 4 T. R. 205.)

9. *How Disobedience to a Statute may be punished, &c.*

Where no method of prosecution is appointed.

Where defendant may be prosecuted both by the king and party grieved.

## X. Of pleading a Statute, and Proof of.

See the points noticed under titles "*Indictment*," "*Conviction*," and See further, *Bac. Ab. Statutes* (L.) Pleading a statute.

As to the mode of proving a statute, see "*Evidence*."

Proof of.

## Stocks.

IT is said that every vill, of common right, is bound to provide a pair of stocks, *sed quere*. (*Haw. b. 2, c. 11, s. 5*; *Kitch.* 13. See "*Leet*.")

They ought to be provided at the charge of the town; for, originally, they were not to punish, but to keep men in hold. (1 *Wood's Inst. b. 4, c. 1*.)

But in the case *Steverton v. Scroggs*, 40 Eliz. Trinity Term in Banco Regis, held—as to pillory and tumbrel which are for a like purpose as stocks, that the inhabitants of a vill are not bound to provide them, but the lord of the leet only, for they are necessary for the execution of justice which the lord is to see to be executed, unless there be a prescription to the contrary. (*Cro. Eliz.* 698; *Com. Dig. Leet* (k.).)

That the neglect of supplying stocks is upon pain of forfeiting 5*l.*, which neglect is inquirable in the leet (*ib.*) (*Kit.* 13 a.)

And the constable, by the common law, may confine offenders in the stocks by way of security, but not by way of punishment.

But, by divers statutes, the stocks are also appointed for the punishment of offenders, in sundry cases, after conviction.

## Stores, Naval and War.

(30 & 31 Vict. c. 119, and c. 128. See "*Ships*," "*Wreck*.")

AS to the burning of the queen's ships and stores, &c., see "*Ships*."

As to offences by marine store dealers, see "*Ships*."

As to larceny and embezzlement of stores, see "*Larceny*."

As to the receivers of anchors, cables, &c., see "*Accessory*."

By "*The Naval Stores Act, 1867*," 30 & 31 Vict. c. 119, which does 30 & 31 Vict. c. 119, not extend to Scotland or Ireland, it is enacted that:—



30 & 31 Vict.  
c. 119.

Interpretation of  
terms.

Marks in schedule  
appropriated for  
naval stores.

Obliteration, with  
intent to conceal,  
&c., felony.

Knowingly receiv-  
ing, &c., marked  
stores a misde-  
meanor.

Knowledge of  
stores being  
marked presumed  
against dealers,  
&c.

Summary con-  
viction in certain  
cases.

Penalty on  
dealers in marine  
stores, &c.,  
found in posses-  
sion of unmarked  
stores, and not  
accounting for  
the same.

Sect. 3. In this act—

The term “the admiralty” means the lord high admiral of the United Kingdom, or the commissioners for executing the office of lord high admiral :

The term “dealer in marine stores” means a person bound to conform to the regulations of the Merchant Shipping Act, 1854, section four hundred and eighty :

The term “dealer in old metals” has the same meaning as in the Old Metal Dealers’ Act, 1861 :

The term “stores” includes all goods and chattels and any single store or article.

Sect. 4 repeals the act of 1864, and enacts that this act shall apply to such stores bearing any such mark or part of a mark as in this act mentioned, whether applied before or after the passing of this act.

Sect. 5. The marks described in the schedule to this act may be applied in or on stores therein described, in order to denote her Majesty’s property in stores so marked.

It shall be lawful for the admiralty, their contractors, officers, and workmen, to apply those marks or any of them in or on any such stores.

If any person, without lawful authority (proof of which authority shall lie on the party accused), applies any of those marks in or on any such stores he shall be guilty of a misdemeanor, and shall, on conviction thereof, be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

Sect. 6. If any person, with intent to conceal her Majesty’s property in any stores, takes out, destroys, or obliterates, wholly or in part, any such mark as aforesaid, he shall be guilty of felony, and shall, on conviction thereof, be liable, in the discretion of the court before which he is convicted, to be kept in penal servitude for any term not exceeding five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Sect. 7. If any person, without lawful authority (proof of which authority shall lie on the party accused), receives, possesses, keeps, sells, or delivers any stores bearing any such mark as aforesaid, or any part of any such mark, knowing them to bear such mark or part of a mark, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be liable to be imprisoned for any term not exceeding one year, with or without hard labour.

Sect. 8. Where the person charged with such a misdemeanor as last aforesaid was at the time at which the offence is charged to have been committed in her Majesty’s service, or in the service of the admiralty, or a dealer in marine stores or in old metals, or a pawnbroker, knowledge on his part that the stores to which the charge relates bore such a mark or part of a mark as aforesaid shall be presumed until the contrary is shown.

Sect. 9. A person charged with such a misdemeanor as last aforesaid in relation to stores the value whereof does not exceed five pounds shall be liable, on summary conviction before a justice of the peace, to a penalty not exceeding twenty pounds, or, in the discretion of the justice, to be imprisoned for any term not exceeding six months, with or without hard labour.

Sect. 10. If stores are found in the possession of a person being in her Majesty’s service, or in the service of the admiralty, or being a dealer in marine stores or in old metals, or a pawnbroker, and he is taken or summoned before a justice of the peace, and such stores do not bear any such mark or part of a mark as aforesaid, but the justice sees reasonable grounds for believing them to be or to have been her Majesty’s property, then if such person does not satisfy the justice that he came by the stores so found lawfully, he shall be liable, on summary conviction before the justice, to a penalty not exceeding five pounds.

Sect. 11. A conviction under this act of a dealer in old metals shall, for the purposes of registration and its consequences, under the Old Metal Dealers' Act, 1861, be equivalent to a conviction under that act.

Sect. 12. In order to prevent a failure of justice in some cases by reason of the difficulty of proving knowledge of the fact that stores bore such a mark as aforesaid,—

If stores bearing such a mark or part of a mark are found in the possession of a person not being in her Majesty's service, or in the service of the admiralty, and not being a dealer in marine stores or in old metals, or a pawnbroker, the following provisions shall have effect:—

(1.) If such person, when taken or summoned before a justice of the peace, does not satisfy the justice that he came by the stores so found lawfully, he shall be liable, on conviction by the justice, to a penalty not exceeding five pounds:

(2.) If he satisfies the justice that he came by the stores so found lawfully, the justice, at his discretion, as the evidence given and the circumstances of the case require, may summon before him every person through whose hands such stores appear to have passed, and if any such person as last aforesaid who has had possession thereof does not satisfy the justice that he came by the same lawfully, he shall be liable, on summary conviction before the justice, to a penalty not exceeding five pounds.

Sect. 13. For the purposes of this act, stores shall be deemed to be in the possession or keeping of any person if he knowingly has them in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or inclosed, whether occupied by himself or not, and whether the same are so had for his own use or benefit or for the use or benefit of another.

Sect. 14. A constable of the metropolitan police force may, within the yard and limits for which he is sworn, stop, search, and detain any vessel, boat, or carriage in or on which there is reason to suspect that any of her Majesty's stores stolen or unlawfully obtained may be found, or any person reasonably suspected of then and there having in his possession any such stores stolen or unlawfully obtained.

Sect. 15. The following sections of the act of the session of the twenty-fourth and twenty-fifth years of her Majesty's reign (chapter ninety-six), "to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences," shall be incorporated with this act, and shall, for the purposes of this act, be read as if they were here re-enacted, namely, sections ninety-eight to one hundred, one hundred and three, one hundred and seven to one hundred and thirteen, and one hundred and fifteen to one hundred and twenty-one, all inclusive; and for this purpose the expression "this act," when used in the sections herein incorporated, shall be taken to include the present act.

These sections are here introduced to assist the application of this statute, without having to refer to them under other titles:—

Sect. 98. In case of every felony punishable under this act every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act (except only a receiver of stolen property) shall, on conviction, be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act shall be liable to be indicted and punished as a principal offender.

Sect. 99. Whosoever shall aid, abet, counsel, or procure the commission of any offence which is by this act punishable on summary conviction, either for every time of its commission, or for the first

30 & 31 Vict.  
c. 119.

Effect of conviction of dealer in old metals.

Persons not dealers in marine stores, &c., found in possession and not satisfactorily accounting for them, liable to a penalty.

Criminal possession of stores explained.

Policemen of metropolitan force may stop suspected persons, &c.

Sections 98, 99, 100, 103, 107 to 113, and 115 to 121, of 24 & 25 Vict. c. 96, incorporated with this act.

24 & 25 Vict. c. 96.

Principals in the second degree and accessories.

Abettors in misdemeanors.

Abettors in offences punishable on summary conviction.

30 & 31 Vict.  
c. 119.

and second time only, or for the first time only, shall, on conviction before a justice of the peace, be liable, for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence as a principal offender is by this act made liable.

As to restitution and recovery of stolen property :

The owner of stolen property prosecuting thief or receiver to conviction shall have restitution of his property.

Provision as to valuable and negotiable securities.

Not to apply to prosecutions of trustees, bankers, &c.

Sect. 100. If any person guilty of any such felony or misdemeanor as is mentioned in this act, in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for such offence, by or on the behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and in every case in this section aforesaid the court before whom any person shall be tried for any such felony or misdemeanor shall have power to award from time to time writs of restitution for the said property, or to order the restitution thereof in a summary manner: provided, that if it shall appear before any award or order made that any valuable security shall have been *bond fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bond fide* taken or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdeameanor been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, in such case the court shall not award or order the restitution of such security: provided also, that nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods or documents of title to goods for any misdemeanor against this act.

As to apprehension of offenders, and other proceedings :

A person in the act of committing any offence may be apprehended without a warrant.

A justice, upon good grounds of suspicion proved on oath, may grant a search warrant.

Any person to whom stolen property is offered may seize the party offering it.

Sect. 103. Any person found committing any offence punishable, either upon indictment or upon summary conviction, by virtue of this act, except only the offence of angling in the daytime, may be immediately apprehended without a warrant by any person, and forthwith taken, together with such property, if any, before some neighbouring justice of the peace, to be dealt with according to law; and if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence, punishable either upon indictment or upon summary conviction by virtue of this act, shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorised, and, if in his power, is required to apprehend and forthwith to take before a justice of the peace the party offering the same, together with such property, to be dealt with according to law.

If a person summarily convicted shall not pay, &c., the justice may commit him.  
Scale of imprisonment.

Sect. 107. In every case of a summary conviction under this act, where the sum which shall be forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which shall be imposed as a penalty by the justice, shall not be paid, either immediately after the conviction, or within such period as the justice shall at the time of the conviction appoint, the convicting justice (unless where otherwise specially directed) may commit the offender

to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two months, where the amount of the sum forfeited or of the penalty imposed, or of both (as the case may be), together with the costs, shall not exceed five pounds, and for any term not exceeding four months where the amount, with costs, shall not exceed ten pounds, and for any term not exceeding six months in any other case, the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.

Sect. 108. Where any person shall be summarily convicted before a justice of the peace of any offence against this act, and it shall be a first conviction, the justice may, if he shall so think fit, discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justice.

Justice may discharge the offender in certain cases.

Sect. 109. In case any person convicted of any offence punishable upon summary conviction by virtue of this act shall have paid the sum adjudged to be paid, together with costs, under such conviction, or shall have received a remission thereof from the crown, or from the lord lieutenant or other chief governor in Ireland, or shall have suffered the imprisonment awarded, for non-payment thereof, or the imprisonment adjudged in the first instance, or shall have been so discharged from his conviction by any justice as aforesaid, in every such case he shall be released from all further or other proceedings for the same cause.

A summary conviction shall be a bar to any other proceeding for the same cause.

Sect. 110. In all cases where the sum adjudged to be paid on any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction for the county or place wherein the cause of complaint shall have arisen; provided, that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or shall enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; or if such appeal shall be against any conviction, whereby only a penalty or other sum of money shall be adjudged to be paid, shall deposit with the clerk of the convicting justice such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of the appeal; and upon such notice being given, and such recognizance being entered into, or such deposit being made, the justice before whom such recognizance shall be entered into, or such deposit shall be made, shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal or the affirmance of the conviction shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and in any case where after any such deposit shall have been made as aforesaid the conviction shall be affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction and the costs of the appeal, to be paid out of the money

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c. 119.

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c. 119.

deposited, and the residue thereof, if any, to be repaid to the party convicted; and in any case where after any such deposit the conviction shall be quashed, the court shall order the money deposited to be repaid to the party convicted; and in every case where any conviction shall be quashed on appeal as aforesaid, the clerk of the peace, or other proper officer, shall forthwith endorse on the conviction a memorandum that the same has been so quashed; and whenever any copy or certificate of such conviction shall be made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction.

No certiorari, &c.

Sect. 111. No such conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari into any of her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Convictions to be  
returned to the  
quarter sessions.

Sect. 112. Every justice of the peace before whom any person shall be convicted of any offence against this act shall transmit the conviction to the next court of general or quarter sessions which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court; and upon any information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown.

Venue, in proceed-  
ings against per-  
sons acting under  
this act.

Sect. 113. All actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be laid and tried in the county where the fact was committed, and shall be commenced within six months after the fact committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant has by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the judge before whom the trial shall be shall certify his approbation of the action.

Offences commit-  
ted within the  
jurisdiction of the  
admiralty.

Sect. 115. All indictable offences mentioned in this act which shall be committed within the jurisdiction of the admiralty of England or Ireland shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in which the offender shall be apprehended or be in custody; and in any indictment for any such offence or for being an accessory to any such offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence itself shall be averred to have been committed "on the high seas;" provided, that nothing herein con-

tained shall alter or affect any of the laws relating to the government of her Majesty's land or naval forces. 30 & 31 Vict. c. 119.

Sect. 116. In any indictment for any offence punishable under this act, and committed after a previous conviction or convictions for any felony, misdemeanor, or offence or offences punishable upon summary conviction, it shall be sufficient, after charging the subsequent offence, to state that the offender was at a certain time and place or at certain times and places convicted of felony, or of an indictable misdemeanor, or of an offence or offences punishable upon summary conviction, (as the case may be,) without otherwise describing the previous felony, misdemeanor, offence or offences; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony or misdemeanor, or a copy of any such summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, or to which such summary conviction shall have been returned, or by the deputy of such clerk or officer, (for which certificate or copy a fee of five shillings and no more shall be demanded or taken,) shall, upon proof of the identity of the person of the offender, be sufficient evidence of such conviction, without proof of the signature or official character of the person appearing to have signed the same; and the proceedings upon any indictment for committing any offence after a previous conviction or convictions shall be as follows; (that is to say,) the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he plead not guilty, or if the court order a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to inquire concerning such subsequent offence only; and if they find him guilty, or if on arraignment he plead guilty, he shall then, and not before, be asked whether he had been previously convicted as alleged in the indictment, and if he answer that he had been so previously convicted the court may proceed to sentence him accordingly, but if he deny that he had been so previously convicted, or stand mute of malice, or will not answer directly to such question, the jury shall then be charged to inquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall for all purposes be deemed to extend to such last-mentioned inquiry: Provided, that if upon the trial of any person for any such subsequent offence such person shall give evidence of his good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before such verdict of guilty shall be returned, and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

Form of indictment for a subsequent offence.

When the previous conviction is to be proved on the trial.

Sect. 117. Whenever any person shall be convicted of any indictable misdemeanor punishable under this act, the court may, if it shall think fit, in addition to or in lieu of any of the punishments by this act authorised, fine the offender, and require him to enter into his own recognisances and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this act the court may, if it shall think fit, require the offender to enter into his own recognisances, and to find sureties, both or either, for keeping the peace, in addition to any punishment by this act authorised: Provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

Fine, and sureties for keeping the peace; in what cases.

Sect. 118. Whenever imprisonment, with or without hard labour, may be awarded for any indictable offence under this act, the court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction.

Hard labour.

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c. 119.

Solitary confinement and whipping.

Summary proceedings in England may be under the 11 & 12 Vict. c. 43, and in Ireland under the 14 & 15 Vict. c. 93;

except in London and the metropolitan police district.

The costs of the prosecution of misdemeanors against this act may be allowed.

Prohibited sweeping for stores within 100 yards of dock-yards, &c.

Penalty.

Penalties, &c. to be applied under orders of admiralty.

Not to prevent persons being indicted under this act, &c.

Amendment of

Sect. 119. Whenever solitary confinement may be awarded for any indictable offence under this act, the court may direct the offender to be kept in solitary confinement for any portion or portions of his imprisonment, or of his imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year; and whenever whipping may be awarded for any indictable offence under this act, the court may sentence the offender to be once privately whipped, and the number of strokes and the instrument with which they shall be inflicted shall be specified by the court in the sentence.

Sect. 120. Every offence hereby made punishable on summary conviction may be prosecuted in England in the manner directed by the act of the session holden in the eleventh and twelfth years of Queen Victoria, chapter forty-three, so far as no provision is hereby made for any matter or thing which may be required to be done in the course of such prosecution, and may be prosecuted in Ireland before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by the 14 & 15 Vict. c. 93, or in such other manner as may be directed by any act that may be passed for like purposes; and all provisions contained in the said acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this act: Provided, that nothing in this act contained shall in any manner alter or affect any enactment relating to procedure in the case of any offence punishable on summary conviction within the city of London or the metropolitan police district, or the recovery or application of any penalty or forfeiture for any such offence.

Sect. 121. The court before which any indictable misdemeanor against this act shall be prosecuted or tried may allow the costs of the prosecution in the same manner as in cases of felony; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

Sect. 16. It shall not be lawful for any person, without permission in writing from the admiralty, or from some person authorised by the admiralty in that behalf (proof of which permission shall lie on the party accused), to gather or search for stores, or to creep, sweep, or dredge in the sea or any tidal water within one hundred yards from any vessel belonging to her Majesty or in her Majesty's service, or from any mooring place or anchoring place appropriated to such vessels, or from any moorings belonging to her Majesty, or from any of her Majesty's wharves, or dock, victualling, or steam factory yards, or in or on any part of the spaces or distances from time to time marked out as ranges for artillery practice for the use of her Majesty's ships at Portsmouth, Devonport, or elsewhere, whether covered with water or not.

If any person acts in contravention of this provision, he shall be liable, on summary conviction before a justice of the peace, to a penalty not exceeding five pounds, or to be imprisoned for any term not exceeding three months, with or without hard labour.

Sect. 17. Notwithstanding anything in any act relating to municipal corporations, or to the metropolitan police force, or in any other act, any pecuniary penalty or other money recovered under this act shall be paid or applied as the admiralty direct.

Sect. 18. Nothing in this act shall prevent any person from being indicted under this act or otherwise for any indictable offence made punishable on summary conviction by this act, or prevent any person from being liable under any other act, or otherwise, to any other or higher penalty or punishment than is provided for any offence by this act, so that no person be punished twice for the same offence.

Sect. 19. Section 45 of the Greenwich Hospital Act, 1865, shall be

read and have effect as if this act, instead of the Naval and Victualling Stores Act, 1864, were referred to in that section. 30 & 31 Vict. c. 119.

Sect. 20. The repeal by the Admiralty Acts Repeal Act, 1865, of sections 1, 2, 4, 5, and 8 of the 9 & 10 Will. 3, c. 41, "for the better preventing the imbezzlement of his Majesty's stores of war, and preventing cheats, frauds, and abuses in paying seamen's wages," is hereby repealed as far as those sections relate to any stores except naval or victualling stores, or other stores belonging to or under the charge or control of the admiralty, or to Scotland or Ireland, and to that extent those sections are hereby revived; but nothing herein contained shall interfere with the operation of any other act of the present session. sect. 45 of 28 & 29 Vict. c. 89. Amendment of 28 & 29 Vict. c. 112, as to repeal of certain sections of 9 & 10 W. 3, c. 41.

## SCHEDULE.

Marks appropriated for her Majesty's use in or on stores.

Stores.	Marks.
Hempen Cordage and wire rope .	White, black, or coloured worsted threads laid up with the yarns and the wire respectively.
Canvas, fearnought, hammocks, and seamen's bags.	A blue line in a serpentine form.
Buntin . . . . .	A double tape in the warp.
Candles . . . . .	Blue or red cotton threads in each wick, or wicks of red cotton.
Timber, metal, and other stores not before enumerated.	The broad arrow.

By 30 & 31 Vict. c. 128, "An Act for the Protection of War Department Stores," it is enacted that. 30 & 31 Vict. c. 128.

Sect. 1. This act may be cited as the War Department Stores Act, Short title. 1867.

Sect. 2. This act shall not extend to Scotland or Ireland.

Sect. 3. In this act—

Extent of act.

Interpretation of terms.

The term "the secretary of state for war" means such one of her Majesty's principal secretaries of state as her Majesty is for the time being pleased to intrust with the seals of the war department:

The term "dealer in marine stores" means a person bound to conform with the regulations of The Merchant Shipping Act, 1854, s. 480. 17 & 18 Vict. c. 104, s. 480.

The term "dealer in old metals" has the same meaning as in The Old Metal Dealers Act, 1861: 24 & 25 Vict. c. 110.

The term "stores" includes all goods and chattels and any single store or article.

Sect. 4. Repeals the enactments in the schedule to this act as far as they relate to military or ordnance stores, or stores under the charge or control of the secretary of state for war; and provides that this act shall apply to stores bearing any such mark or part of a mark as in this act mentioned, whether applied before or after the passing of this act. Repeal of enactments in schedule to this act.

Sect. 5. The following marks, namely, the broad arrow with or without the letters W. D. or the letters B. O., may be applied in or on stores to denote her Majesty's property in stores so marked. Marks appropriated for war department stores.

It shall be lawful for the secretary of state for war and the contractors, officers, and workmen of the war department to apply those marks or any of them in or on stores.



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c. 128.

Obliteration with  
intent to conceal,  
&c., felony.

Knowingly  
receiving, &c.,  
marked stores a  
misdemeanor.

Knowledge of  
stores being  
marked pre-  
sumed against  
dealers, &c.

Summary convic-  
tion in certain  
cases.

Penalty on dealer,  
&c., found in  
possession of  
unmarked stores,  
and not account-  
ing.

Effect of convic-  
tion of dealer in  
old metals.

Penalty on per-  
sons not dealers,  
&c., found in  
possession of  
marked stores and  
not accounting.

If any person without lawful authority (proof of which authority shall lie on the party accused) applies any of those marks in or on any stores, he shall be deemed guilty of a misdemeanor, and shall on conviction thereof be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

Sect. 6. If any person, with intent to conceal her Majesty's property in any stores, takes out, destroys, or obliterates wholly or in part any such mark as aforesaid, he shall be deemed guilty of felony, and shall on conviction thereof be liable, in the discretion of the court before which he is convicted, to be kept in penal servitude for any term not exceeding five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Sect. 7. If any person without lawful authority (proof of which authority shall lie on the party accused) receives, possesses, keeps, sells, or delivers any stores bearing any such mark as aforesaid, or any part of any such mark, knowing them to bear such mark or part of a mark, he shall be deemed guilty of a misdemeanor, and shall on conviction thereof be liable to be imprisoned for any term not exceeding one year, with or without hard labour.

Sect. 8. Where a person charged with such a misdemeanor as last aforesaid was, at the time at which the offence is charged to have been committed, in her Majesty's service or a dealer in marine stores or in old metals, or a pawnbroker, knowledge on his part that the stores to which the charge relates bore such a mark or part of a mark as aforesaid shall be presumed until the contrary is shown.

Sect. 9. A person charged with such a misdemeanor as last aforesaid in relation to stores the value whereof does not exceed 5*l.*, shall be liable, on summary conviction before a justice of the peace, to a penalty not exceeding 5*l.*, or in the discretion of the justice to be imprisoned for any term not exceeding six months, with or without hard labour.

Sect. 10. If stores are found in the possession of a person being in her Majesty's service, or being a dealer in marine stores or in old metals, or a pawnbroker, and he is taken or summoned before a justice of the peace, and such stores do not bear any such mark or part of a mark as aforesaid, but the justice sees reasonable grounds for believing them to be or to have been her Majesty's property, then, if such person does not satisfy the justice that he came by the stores so found lawfully he shall be liable on summary conviction before the justice to a penalty not exceeding 5*l.*

Sect. 11. A conviction under this act of a dealer in old metals shall for the purposes of registration and its consequences under the Old Metal Dealers Act, 1861, be equivalent to a conviction under that act.

Sect. 12. In order to prevent a failure of justice in some cases by reason of the difficulty of proving knowledge of the fact that stores bore such a mark as aforesaid,—

If stores bearing such a mark or part of a mark are found in the possession of a person not being in her Majesty's service, and not being a dealer in marine stores or in old metals, or a pawnbroker, the following provisions shall have effect:—

- (1.) If such person when taken or summoned before a justice of the peace does not satisfy the justice that he came by the stores so found lawfully, he shall be liable on summary conviction before the justice to a penalty not exceeding 5*l.*
- (2.) If he satisfies the justice that he came by the stores so found lawfully, the justice, at his discretion, as the evidence given and the circumstances of the case require, may summon before him every person through whose hands such stores appear to have passed, and if any such person as last aforesaid who has had possession thereof does not satisfy the justice that he came

by the same lawfully, he shall be liable on summary conviction before the justice to a penalty not exceeding 5*l*. 30 & 31 Vict. c. 128.

Sect. 13. The provisions of this act relative to the taking out, destroying, or obliterating of marks, or to the receiving, possessing, keeping, selling, or delivering of marked stores, or to the possessing of unmarked stores, shall not apply to stores issued as regimental necessities or otherwise for any soldier, militiaman, or volunteer, but nothing herein shall relieve any person from any obligation or liability to which he may be subject under any other act in respect of any such stores. Provision for regimental necessities, &c.

Sect. 14 is the same as sect. 13 of preceding statute, 30 & 31 Vict. c. 119, *ante*, p. 733. Criminal possession.

Sect. 15 corresponds to sect. 14. (See *ante*, p. 733.)

Sect. 16 enacts same as sect. 15 of preceding act. (See *ante*, p. 733.) Power of search, 24 & 25 Vict. c. 96, incorporated.

Sect. 17. It shall not be lawful for any person without permission in writing from the secretary of state for war, or from some person authorised by him in that behalf (proof of which permission shall lie on the party accused), to gather or search for stores, or to creep, sweep, or dredge in the spaces or distances marked out and appropriated for ranges under the provisions of the Artillery Ranges Act, 1862, whether covered with water or not, or in the sea or any tidal water within one thousand yards of any battery or fort used for the practice of artillery either by the royal artillery or by militia or volunteer artillery. No person to gather or search for stores within ranges, unless authorised.

If any person acts in contravention of this provision he shall be liable on summary conviction before a justice of the peace to a penalty not exceeding 5*l*., or to be imprisoned for any term not exceeding three months, with or without hard labour. Penalty.

Sect. 18. Notwithstanding anything in any act relating to municipal corporations, or to the metropolitan police force, or in any other act, any pecuniary penalty or other money recovered under this act shall be paid or applied as the secretary of state for war directs. Application of penalties, &c.

Sect. 19 is the same as section 18 of preceding act. (See *ante*, p. 733.) Liability to indictment same.

Sect. 20. The secretary of state for war may institute and prosecute any action, suit, or proceeding, civil or criminal, concerning military or ordnance stores, or other her Majesty's stores under the charge or control of the secretary of state for war, or any stores sold or contracted to be delivered to or by the secretary of state for war for the use or on account of her Majesty, or the price to be paid for the same, or any loss or injury of or to any such stores as aforesaid, and may defend any action, suit, or proceeding concerning any such stores, matter, or thing as aforesaid; and in every such action, suit, or proceeding the secretary of state for war may be so described, without more; and any such action, suit, or proceeding shall not be affected by any change in the person for the time being holding the office of secretary of state for war: Provided always as follows: Power for secretary of state to sue, &c.

(1.) Nothing herein shall take away or abridge in or in relation to any such action, suit, or proceeding any legal right, privilege, or prerogative of the crown; and in all such actions, suits, and proceedings, and in all matters and proceedings connected therewith, the secretary of state for war may exercise and enjoy all such rights, privileges, and prerogatives as are for the time being exercised and enjoyed in any proceeding in any court of law or equity by the crown, as if the crown were actually a party to such action, suit, or proceeding:

(2.) It shall be lawful for her Majesty, her heirs and successors, if and when it seems fit, to proceed by information in the court of exchequer, or by any other crown process, legal or equitable, in any case in which it would have been competent for her Majesty, her heirs or successors, so to proceed if no provisions respecting procedure had been inserted in this act.

30 & 31 Vict.  
c. 128.

## SCHEDULE.

Enactments repealed with respect to War Department Stores, except as to Scotland and Ireland.

9 & 10 Will. 3, c. 41. in part.	An act for the better preventing the imbezzlement of his Majesty's stores of war, and preventing cheats, frauds, and abuses in paying seaman's wages } in part ; Sections one, two, four, five, and eight. } namely,—
9 Geo. 1, c. 8. in part.	An act, the title whereof begins with the words, "An act for continuing some laws," and ends with the words, "Stuffs to be exported" } in part ; Sections three, four, and five. } namely,—
17 Geo. 2, c. 40. in part.	An act, the title whereof begins with the words, "An act to continue the several laws," and ends with the words, "England without licence" } in part ; Section ten. } namely,—
39 & 40 Geo. 3, c. 89.	An act for the better preventing the embezzlement of his Majesty's naval, ordnance, and victualling stores.
54 Geo. 3, c. 60.	An act for the better preventing the embezzlement of his Majesty's cordage.
55 Geo. 3, c. 127.	An act to repeal an act of the fifty-third year of his present Majesty, for preventing the embezzlement of stores ; and to extend the provisions of the several acts relating to his Majesty's naval, ordnance, and victualling stores to all other public stores.
4 Geo. 4, c. 53.	An act for extending the benefit of clergy to several larcenies therein mentioned.

## Summons.

Summons, when proper.

IN all legal proceedings, the person complained of ought to have notice of the charge laid against him, and to have an opportunity of being heard in his own defence, and there is no case of a judicial proceeding by which a man is to be deprived of any part of his property, without his having an opportunity of being heard. (See *per Bayley, Capel v. Child*, 2 C. & J. 579 ; *R. v. Benn*, 6 T. R. 198 ; *R. v. Justices of Stafford*, 5 Nev. & M. 94 ; 1 H. & W. 328 ; *Painter v. Liverpool Gas Company*, 6 Nev. & M. 736 ; 3 A. & E. 433.) Consequently, where a person is accused before the justices, they ought to summon the party to appear, or issue their warrant to bring him before them. The manner of conveying the parties is sometimes directed by the acts of parliament creating the respective offences, which, therefore, ought to be pursued accordingly. In other cases, where it is left discretionary in the justices, it seemeth most agreeable to the mildness of our laws to put the party to no more inconvenience than needs must ; and therefore, where the case will bear it, a summons seems more apposite than a compulsory process. But, in cases of sureties of the peace, larcenies, and other felonies, and generally where the king is a party, and also in cases between party and party, where the body of the offender is liable, a warrant is the regular process, and not a summons. In some cases, a party may be apprehended without either a summons or warrant. See "*Arrest*." See further, as to the necessity of a summons, and when it is dispensed with, "*Conviction*," "*Justices*."

Warrant, when proper.

Form and service of.

The form of the summons, as also the mode of serving it, and the consequences of defects, will be found noticed under title "*Conviction*." In many instances the mode of service of a summons is pointed out by statute. (See "*Justices*," *duties of, out of quarter sessions*.)

See forms of summonses, titles "*Conviction*," "*Justices*."

## Surety of the Peace.

OUT of the Latin word *pax*, the Normans formed their *paix*, and we (out of that) our *peace*. (*Lamb. 5.*) Surety of the peace.

*Surety of the Peace* is the acknowledging of a recognizance or bond to the queen, taken by a competent judge of record, for keeping the peace. (*Dalt. c. 116.*)

And this surety of the peace every justice of the peace may take and command by a twofold authority: 1. As a minister, commanded thereto by a higher authority; as, when a writ of *supplicavit* directed out of the Chancery or Queen's Bench is delivered to him. 2. As a judge, and by virtue of his office, derived from his commission. (*Dalt. c. 196.*) And by the first clause of the commission, justices in session may take surety for the peace. (*Title "Justices."*) Who may take it.

- I. *For what cause Surety of the Peace shall be granted*, p. 743.
- II. *At whose request granted*, p. 745.
- III. *Against whom granted*, p. 745.
- IV. *By whom, and in what Manner granted, and Form, &c. of Recognizance*, p. 745.
- V. *How the Peace-Warrant may be superseded*, p. 750.
- VI. *How executed*, p. 751.
- VII. *How Recognizance may be forfeited, and Proceedings thereon*, p. 752.
- VIII. *How discharged*, p. 753.

### I. For what Cause granted.

By the commission of the peace, justices of peace have power to cause to come before them, or any one of them, all those who, to any of the queen's people, concerning their bodies, or the firing of their houses, have used threats, to find sufficient security for the peace, or their good behaviour towards the queen and her people; and if they shall refuse to find such security, to cause them in the queen's prisons to be safely kept, until they shall find such security. See the form of the commission, *title "Justices."* For what cause to be granted.

Upon which Mr. *Hawkins* observes, that it seemeth clear that, wherever a person has just cause to fear that another will burn his house, or do him a corporal hurt,—as, by killing or beating him, or that he will procure others to do him such mischief, he may demand the surety of the peace against such person; and that every justice of the peace is bound to grant it, upon the party's giving him satisfaction upon oath that he is actually under such fear, and that he has just cause to be so, by reason of the other's having threatened to beat him, or laid in wait for that purpose; and that he doth not require it out of malice or for vexation. (*1 Haw. c. 60, s. 6*; see *Butt v. Conant*, 1 B. & B. 548; 4 *Moore*, 195, *the case a libel*.) Fear of corporal hurt, or burning his house.

Also, it seems the better opinion, that he who is threatened to be imprisoned by another has a right to demand the surety of the peace: for every unlawful imprisonment is an assault and wrong to the person of a man. And the objection that one wrongfully imprisoned may recover damages in an action, and therefore needs not the surety of the peace, is as strong in the case of battery as imprisonment; and yet there is no doubt but that one threatened to be beaten may demand the surety of the peace. (*1 Haw. c. 60, s. 7.*) Being threatened with imprisonment.

1. For what Cause granted.

Where demanded through malice or vexation.

Fear of harm to his servants or cattle.

Threatening a man's wife or child.

Must be a fear of present or future danger.

There must be a threat.

But need not be in words.

Justice to decide as to sufficiency of threats.

Q. B. will not interfere with decision.

If warranted by the oath.

But, if the justice shall perceive that surety is demanded merely of malice, or for vexation only, without any just cause or fear, it seemeth he may safely deny it. (*Dalt. c. 116.*) Implied malice is no ground for granting the sureties: direct malice must be shown from particular facts. Also, if a man will require the peace, because he is at variance or in suit with his neighbour, it shall not be granted. (*Dalt. c. 116.*)

Also, Mr. Lambard says, he takes it to be somewhat clear that a justice may not by the commission award a precept of the peace in behalf of a man that will require it, because he feared that he will do harm to his servants or cattle. (*Lamb. 83.*) And Mr. Dalton says, where a man is in fear that another will hurt his servants, or his cattle, or other goods, this surety of the peace shall not be granted by the justice. But, in this case, *Fitzherbert* saith, the party may have a special writ out of the Chancery directed to the sheriff, that he shall cause such person to find surety that he shall do no hurt or damage to the other man in his body, or to his servants or goods; and, if he will not find surety, that then he shall arrest and detain him in prison until he shall find surety. (*Dalt. c. 116.*) The reason why a man may not have sureties of the peace against another, for that he feareth he will do harm to his servants, seemeth to be, because it should be the servant's fear in such case, and not the master's; and the servant's own oath before the justice is necessary. And as to his goods, it seemeth clear that no sureties of the peace, ought to be granted in that case: for the recognizance of the peace, when taken, is only that the party shall keep the peace towards the king and all his liege people.

But Mr. Dalton says, that if a man shall threaten to hurt his wife or child, he thinks he may crave the peace at the justice's hands by the words of the commission, and that the justice ought to grant it. (*Dalt. c. 116.*)

Surety of the peace shall not be granted but where there is a fear of some present or future danger, and not merely for a battery or trespass that is past, or for any breach of the peace that is past; for this surety of the peace is only for the security of such as are in fear; but the party wronged may punish the offender by indictment, and the justice, if he see cause, may bind over the affrayer. (*Dalt. c. 11.*) That is, he may bind him over to answer unto the indictment.

The fear must arise from a threat, which must appear on the articles exhibited. (*Reg. v. Dunn, 12 A. & E. 599; 4 P. & D. 415.*)

But the threat need not be in words, it may be inferred by a course of conduct. But this inference must be that of the exhibitant, and not of the court. (*Id.*)

If there be any ambiguity in the threats it is for the justice to give them such a construction as he thinks right, and his decision will in this respect be final. (*R. v. Tregarthen, 5 B. & Ad. 678; 2 Nev. & M. 379.*)

The Court of Queen's Bench will not interfere with his decision. Therefore, where a party gave information on oath before a magistrate, that from certain language used towards him he was in bodily fear from another, and the magistrate, upon hearing the complaint, required the latter to enter into recognizances to keep the peace: on motion to discharge the recognizances, on the ground that the language was used in a metaphorical sense only, the court refused to interfere, because it was for the magistrate to judge in what sense the language was used. (*Id.*)

But the oath on which the complaint is founded must be sufficient to warrant the decision. (*Reg. v. Dunn, 12 A. & E. 599; 4 P. & D. 415.*)

## II. At whose Request granted.

2. At whose Request granted.

As to this, Mr. *Hawkins* says, it seems to be agreed at this day, that all persons whatsoever, under the queen's protection, being of *sane* memory, whether they be natural and good subjects or aliens, or attainted of treason, &c., have a right to demand surety of the peace. And it is certain a wife may demand it against her husband threatening to beat her outrageously, and that a husband also may have it against his wife. (1 *Haw. c.* 60, s. 2; *Cowp.* 118.) Upon which Mr. *Crompton* observeth, that if the wife, in such case, cannot find sureties, she shall be committed; "and so (says he), a man may be rid of a shrew." (*Crompt.* 118.) (a.)

May be demanded by any person.

By wife.

And Mr. *Dalton* says, an infant under the age of fourteen years may demand this surety, and it shall be granted to him. (*Dalt. c.* 117.)

By infant.

But, as to a person of *non-sane* memory, Mr. *Dalton* says, this surety shall neither be granted against him nor to him, upon his own request; but, yet, if there shall be cause, the justices ought to provide for his safety. (*Dalt. c.* 117.)

Lunatic.

A peeress may demand surety of the peace against her husband. (See the cases of *Lord Vane*, 2 *Stra.* 1202; 13 *East*, 171, n.; *Marquis Carmarthen*, *Fort.* 359; *Earl Ferrers*, 1 *Burr.* 631, 703; *Earl Stamford*, *Cas. T. Hardw.* 74; *Lord Strathmore*, 1 *T. R.* 696; *Lord Howard*, 11 *Mod.* 109.)

Peeress.

A partner forced by the violence of his copartner out of the business premises, and threatened with violence and danger to his life, if he ventured again to enter the premises, was allowed to exhibit articles of the peace against such copartner, on showing that it was necessary for the applicant to go to the premises for the purpose of carrying on his business. (*R. v. Malinson*, 20 *L. J. M. C.* 33.)

By one partner against another.

## III. Against whom granted.

There seems to be no doubt but that it ought, upon a just cause of complaint, to be granted by any justice of the peace against any person whomsoever, under the degree of nobility, being of sane memory, whether he be a magistrate or private person, and whether he be of full age or under age. But infants and *femes covert*s ought to find security by their friends, and not to be bound themselves. And the *safest* way of proceeding against a peer is by complaint to the court of Chancery or Queen's Bench. (1 *Haw. c.* 60, s. 3; 4 *Bla. Com.* 253. See *ante*, "*Peers.*")

Against whom.

Infants and femes covert.

Peers.

## IV. By whom and how granted. Form, &amp;c., of Recognizance.

The courts of Chancery or Queen's Bench, or any justice or other conservator of the peace, may, it should seem, compel surety of the peace. Who may compel it.

(a) If the marriage be disputed, the court will order the recognizance to be worded so as not to admit the fact. And it was directed to be as follows: "To keep the peace towards our sovereign lord the King, and all his liege people, and particularly towards Hannah Penn, who hath ex-

hibited articles of the peace against him, the said James Bambridge, by the name of Hannah Bambridge, wife of him the said James, and that he shall not depart the court without leave," &c. (*R. v. Bambridge*, 2 *Str.* 1231.)

4. *By whom and how granted, Form, &c., of Recognizance.*

Process out of the Chancery or Q. B.

*By process out of Court of Queen's Bench or Chancery.*—As to granting process of the peace or good behaviour out of the Chancery or the Queen's Bench, it is enacted by the 21 Jac. 1, c. 8, that it shall not be granted but upon motion in open court, and declaration in writing, and upon oath to be exhibited by the party desiring such process, of the causes for which such process shall be granted; the motion and declaration to be mentioned on the back of the writ. And if it shall afterwards appear that the causes are untrue, the court may order costs to the party grieved, and commit the offender till paid.

In all cases of misdemeanor punishable by imprisonment, the Court of Queen's Bench may order the defendant to find sureties to keep the peace for a time certain. (*Dunn v. R.* 12 Q. B. 1026, 18 L. J. M. C. 41.)

Before a single justice.

*By Justice out of Sessions.*—If a person require immediate surety of the peace, and there be no sessions sitting, he should go before a justice or justices out of session, and make complaint on oath of the facts which require the surety. The complaint is usually in writing, but not necessarily so. See Form No. 1, *post*, p. 764. As to what is a sufficient ground for requiring the surety, see *ante*, p. 743. As to how far the defendant is at liberty to controvert the facts stated in the complaint, see *post*, p. 749.

Warrant of apprehension.

If the offending party be present, he may be required at once to enter into the requisite recognizance. If he be absent, the justice may make out a warrant to bring the party before himself or some other justice, or he may make it to bring the party before himself only: for he that maketh the warrant for the most part hath the best knowledge of the matter, and therefore he is the fittest to do justice in the case. (5 Rep. 59.) Such warrant ought to be under seal, and show the cause for which it is granted, and at whose suit, and that it be directed to any indifferent person. (1 Haw. c. 60, s. 9.) As to the mode of executing the warrant, see *post*, p. 751. See Form of warrant, No. 2, *post*, p. 764.

Commitment for not finding sureties.

When the party cometh before the justice, he must offer sureties, or else the justice may commit him; for the justice needeth not to demand surety of him. (*Dalt. c.* 118, 169.) If he be absent, he cannot be committed without a warrant from some justice, in order to find sureties. (1 Haw. c. 60, s. 9.) See Forms of commitment, Nos. 4, 5, *post*, p. 765.

The commitment may be to a house of correction as well as any other public gaol. (*Exp. Aston*, 13 Law J., N. S., M. C. 52.)

Warrant should be for time certain.

A justice's warrant, committing a party in default of his finding sureties to keep the peace, is bad if the commitment be for no definite time, but "until he shall find such sureties," or be discharged by due course of law; but it is not necessary that the warrant should fix the amount in which sureties are to be given, because the magistrates before whom the party may subsequently find sureties may be as competent judges of the requisite amount as the committing magistrate, though it appears more proper that the same magistrate should decide that as well as the period for which sureties should be found. (*Prichett v. Greatrex*, 8 Q. B. 1020; 15 L. J. 145, M. C.) In delivering the judgment of the court in that case Lord Denman, C. J., said, "That the power of committing a party until he find sureties for his keeping the peace is a necessary power for the protection of individuals from personal violence, but it is also a very great power, and should be exercised with caution, and kept within proper bounds. Upon such a subject we are not in the habit of regarding ancient precedents with great respect; and when, in later times, we find authority in opposition to those precedents, we should follow it in preference." If, at the expiration of the period, there is still reason to apprehend a breach of the peace, the party ought to be again bound over to keep the peace, or suffer imprisonment as before. (*Ib.*) Mr. Justice Erle is

reported to have expressed himself to the grand jury of Cornwall, in reference to this practice, as follows:—"There was one matter to which he wished particularly to direct the attention of the magistrates. He perceived by the calendar that one man was committed to prison for a breach of the peace for two years, or until he should find sureties, and several were sentenced under a similar charge of breach of the peace for twelve months and shorter periods, or until they should find sureties. For a sentence of two years' imprisonment the offence should be one of very considerable magnitude indeed. There was no doubt such a sentence was legal, but the case ought to be very extreme in point of guilt. It was advisable to apportion punishment according to the degree of the offence. To commit a man for want of sureties might be inflicting a long imprisonment upon a friendless man; and subjecting a man to a long imprisonment for want of friends was not a measure of penal punishment that ought to be adopted." Where articles were exhibited against A. at the quarter sessions of H., and he was ordered to enter into recognizance before one or more justices of H. to keep the peace for six months thence ensuing, and on being brought before two justices and refusing to enter into any recognizances, he was committed to the county gaol for the residue of the six months unless he found sureties in the meantime, the court held that this committal was without jurisdiction, and discharged the prisoner upon *habeas corpus*. (*Re Ashton*, 7 Q. B. 169.)

A person committed to prison for default of sureties to keep the peace, and discharged at the sessions, is not afterwards entitled to a copy of the examinations on which the commitment proceeded, as 11 & 12 Vict. c. 42, s. 27, gives a right to such copy only when a person is bailed, or committed to prison for some offence for which he is to be tried. (*Ex parte Humphrys*, 19 L. J. 189, M. C.; 15 Jur. 608.)

4. By whom and how granted. Form, &c., of Recognizance.

The form of the recognizance, when taken before a justice upon a complaint below, is chiefly in the discretion of such justice, both as to the number and sufficiency of the sureties, and the largeness of the sum, and the continuance of the time for which the party shall be bound. See Form, No. 6, *post*, p. 766. The form of a recognizance, when taken in pursuance of a writ of *supplicavit*, may be wholly governed by the direction of such writ.

Copies of depositions.

Form of recognizance.

A recognizance to keep the peace as to any person, for a year, or for life, or without expressing any certain time (in which case it shall be intended for life), or without fixing any time or place for the party's appearance, or without binding him to keep the peace against all the queen's people in general, is good. (1 *Haw. c.* 60, s. 15; *Willes v. Bridger*, 2 B. & Al. 278.)

However, it is the most usual way, and in general best for justices out of sessions, to bind the party to appear at the next sessions of the peace, and in the meantime to keep the peace as to the queen and all her liege people especially as to the party. (1 *Haw. c.* 60, s. 16.) And, though the recognizance should be removed by *certiorari*, it is no discharge of the obligation to appear. (2 *Haw. c.* 27.)

The Court of Queen's Bench cannot interfere to reduce the amount of security which the magistrate requires. (*Rex v. Holloway*, 2 Dowl. 525.)

The fear of one cannot be the fear of another; and, therefore, every recognizance must be separate. (*Pult.* 18.) But the Court of Queen's Bench have allowed three women to file joint articles of the peace against three men. (*R. v. Nettle, &c.*, 1 *Haw. P. C. c.* 60, *note*, 7th edit.)

Recognizance must be separate.

If it be taken by force of a writ of *supplicavit*, it needs not be certified till the justice receive a writ of *certiorari* to that purpose. But if it be taken upon a complaint below, it must be certified, sent, or brought to the next sessions, by force of the 3 Hen. 7, c. 1, that the party so bound may be called. (1 *Haw. c.* 60, s. 18.)

How recognizance to be certified.



4. *By whom and how granted. Form, &c., of Recognizance.*

Insufficient sureties.

Sureties dying. Take surety on breach.

If the justice was deceived in the sufficiency of the sureties, he or any other justice may afterwards compel the party to find and put in other sufficient sureties, and may take a new recognizance for the same. (*Dalt. c. 116, 119.*)

If the sureties die, the party principal shall not be compelled to find new sureties, (*Dalt. c. 119.*) because their executors and administrators are liable.

But if a man that was bound to keep the peace hath broken his bond, the justices ought of discretion, to bind him anew. (*Lamb. 78.*)

But not until he be thereof convicted by due course of law; for, before conviction, he standeth indifferent whether he hath forfeited his recognizance or not. (*Crompt. 125.*)

Upon an application for sureties of the peace, the magistrate has no jurisdiction to convict for an assault. (*R. v. Davey, 20 L. J., M. C. 189.*)

Before the sessions.

Articles to be exhibited.

*By Sessions.*—The party requiring the surety may at once apply to the court of sessions; and this is the most usual and best course, when the court is sitting.

The application should be made upon articles verified on oath, showing the facts to warrant it. They should be exhibited on parchment. (See Form No. 1, *post*, p. 764.)

If the defendant be under recognizance to appear at the sessions, and application be made for an order of court for finding sureties, articles of the peace must be exhibited for that purpose; for the practice that once existed of calling on the party at the following sessions, at which he is bound to appear to find sureties to the following sessions, and so on from sessions to sessions without any fresh complaint, is improper. (See *R. v. Bowes, 1 T. R. 696.*)

The articles are not sufficient unless they show a threat. (*R. v. Dunn, 12 A. & E. 599; 4 P. & D. 415.*) The threat need not be in words, but may be inferred from a course of conduct. That inference, however, must be drawn by the exhibitant himself; and if he omit to state it in the articles, the court will not draw the inference. (*Id.*)

The exhibitant may allege, as part of his ground for apprehension, misconduct which has been the subject of former articles; although the accused party was committed on those articles for want of sureties, and discharged on *habeas corpus*; and a commitment on such new articles will not be contrary to stat. 31 Car. 2, c. 2, s. 6. *Habeas Corpus Act. (Id.)*

Where a party exhibiting articles of peace alleges, as the ground of fear, expressions in a letter, which he submits to the court for their construction, the court will not take the words into consideration, nor act upon the articles, unless the whole letter be set forth. (*Id.*)

Must be on oath or solemn affirmation.

The articles must be verified by the oath of the exhibitant. (*R. v. Green, 1 Str. 527; Hilton v. Byron, 12 Mod. 243.*) Since the 9 Geo. 4, c. 32, and 3 & 4 Will. 4, c. 49, the solemn affirmation or declaration of a Quaker or Moravian would, it seems, suffice. And so of a separatist since the 3 & 4 Will. 4, c. 82; and of any person who *shall have been* a Quaker or Moravian, (1 & 2 Vict. c. 77.); and by 24 & 25 Vict. c. 66, persons who are witnesses in criminal proceedings, and who, from alleged conscientious motives, are unwilling to be sworn, are permitted to make a solemn affirmation. (See "*Oaths.*")

Where articles of the peace were returned by *certiorari*, and affidavits made by others than the exhibitant were subjoined on the same parchment, and the whole ended with the following jurat:—"Sworn by the several deponents," &c. It was held, that it sufficiently appeared that the articles had been exhibited on oath. (*R. v. Dunn, supra.*)

Affidavits in corroboration.

The articles may be supported by the corroboratory affidavits of third persons, and it is desirable so to support them. The affidavits ought not, it seems, to be entitled with names, &c., there being no

previous cause in court. (*R. v. Jones*, 1 Str. 704; *Bevan v. Bevan*, 3 T. R. 601; *King v. Cole*, 6 T. R. 642.) But affidavits in answer must. (*Id.*)

A person demanding sureties of the peace (whether it be in the first instance before a single justice for immediate security, or by exhibiting articles before the justices in session) swears only to his own apprehensions, of which no other person can form an adequate judgment; from which it has been deduced by the judges, in many cases, as a general rule, that articles of the peace cannot be resisted on any ground, except by showing *direct* evidence of express malice; such as declarations to that effect; but not *inferred* malice, collected from general reasoning, or collateral circumstances; and, moreover, that wherever *particular facts* of violence are stated by the complainant, it is not permitted for the defendant to controvert them; for they must be taken to be true, till negatived through the medium of an appropriate prosecution. (*Reg. v. Dunn*, *supra*; *R. v. Stanhope*, 12 A. & E. 620 n.) And the 56 Geo. 3, c. 100, s. 3, does not alter the practice in this respect. (*Id.*)

In *R. v. Doherty*, 13 East, 171, articles of the peace having been exhibited against the defendant by his wife, process issued thereon to enforce appearance; and when he appeared in court with his sureties, his counsel tendered affidavits to the court in contradiction of the facts sworn to in the articles, for the purpose of discharging them. But the court were satisfied that they could not receive affidavits on the part of the defendant to contradict the truth of the articles exhibited against him, and prevent his giving surety. (And see *Lord Vane's Case*, 13 East, 171 n.)

But in *R. v. Bringlee*, 13 East, 174, *note*, though it was refused the defendant to controvert the facts, yet an explanation was allowed of such parts of the articles as were ambiguous.

And where an application was made to the court to enforce the subsequent process, and the articles manifestly appeared, from the corroborated affidavit of the defendant, to contain *malicious, voluntary, and gross perjury*, the court resisted the application and committed the offender. (*R. v. Parnell*, 2 Burr. 806; *R. v. Hon. P. Mackenzie*, 3 Burr. 1922.)

If the applicant has already been before a justice out of sessions, and the defendant has been bound by recognizance to appear before the justices in session, the court may make proclamation, that "if any man can show cause why the peace granted against such a one shall be continued, he shall speak;" and if no person come to demand the peace against him, or to show cause why it should be continued, then the court may discharge him. (*Dalt.* 120.)

It is said that if a man be bound to keep the peace, and especially if to keep it towards a certain person, though such person come not to desire the peace may be continued, yet the court, by their direction, may bind him over till the next session, and that may be to keep the peace against that person only, if they shall think fit: for it may be that the person who first craved the peace is sick, or otherwise prevented, so as he cannot come to that session to demand the continuance of the peace further. (*Talf. Dick. Sess.* 404.) The power of the sessions, however, to do this seems questionable. In *R. v. Bowes*, where Lady *Strathmore* had exhibited articles of the peace against the defendant (her husband), the court of King's Bench ordered him to give security for fourteen years (it being a case of great outrage, and articles of the peace having been once before exhibited against him on a different complaint), himself in 10,000*l.* and two sureties in 5000*l.* each. The defendant afterwards applied to the court to reduce the time to one year instead of fourteen, and also to diminish the sum; and in the course of the argument in support of the rule, the defendant's counsel suggested that the court might take bail for one

4. By whom and how granted.  
Form, &c., of Recognizance.

Affidavits in contradiction.

Where defendant already bound in recognizance to appear.

Continuing the recognizance.

4. *By whom and how granted. Form, &c., of Recognizance.* year at first, and afterwards renew that from year to year, if they should see occasion, without any fresh facts being exhibited against him. But though the court, on the particular circumstances of the case, ordered the time to be reduced to two years, because an information then depending for the outrage complained of would be disposed of within that time, when the court might deal with the defendant as they thought proper, in the event of his being convicted, Mr. J. *Ashurst*, in answer to the suggestion at the bar, that new bail might be required of the defendant at the end of the first year on the original complaint, said, "I very much doubt whether we have such a power. It has been admitted that there never was any instance of the kind; and I confess I should be very loath to establish such a precedent." (*R. v. Bowes*, 1 T. R. 700.)

Motion to receive articles.

If the applicant appear, he may then move the court to receive articles of the peace against the offender, (with which articles ready drawn on parchment (see Form, No. 10, *post*,) he should come prepared, in order that they may be delivered to the clerk of the peace,) and further, to bind him by recognizance to the next session; and so on from session to session so long as he shall be able to make it appear that his reasonable apprehensions continue. Or the justices may bind him for a certain definite period, without reference to any succeeding session, at their discretion, as we have just seen the individual justice might have done in the first instance. (*Talf. Dick. Sess.* 405.)

Where parties reside at a distance.

The court will not in general receive articles of the peace, if the parties live at a distance in the country, unless they have previously made application to a justice in the neighbourhood, and he has improperly refused to receive them. (*R. v. Waite*, 2 Burr. 780.)

And where articles of the peace were exhibited, and it appeared that the facts charged were done at Portsmouth, the court ordered an indorsement to be made upon the attachment of the peace, authorising and directing any justice in that county to take the security there, specifying the particular sums wherein the principals and also their sureties should be bound. (*Hutt's case*, 1 Bla. Rep. 233; 2 Burr. 1039.)

On an affidavit that the defendant was seventy years of age, and unable to travel, a *mandamus* was granted to three justices in Brecon to take security on articles of the peace exhibited in the King's Bench. (*R. v. Lewis*, 2 Str. 835.)

Refusal to enter into recognizance.

If the defendant refuse or is not prepared to enter into the recognizance, he may be committed. (*Ante*.)

## V. How the Peace-Warrant may be superseded.

Finding sureties before arrest.

It is said, that if one who fears that the surety of the peace will be demanded against him, find sureties before any justice of the same county, either before or after a warrant is issued against him, he may have a *supersedeas* from such justice which shall discharge him from arrest from any other justice at the suit of the same party, for whose security he has given such surety. (1 Haw. c. 60, s. 14.) In which *supersedeas* it is not necessary to name either the sureties or the sums in which they are bound; but yet it is the better form to express them both. (*Dalt. c.* 118.) If a warrant be issued instead of this *supersedeas*, it is usual in practice for the defendant to obtain a note or order from the justice, to the like effect as the *supersedeas*, directed to the constable to discharge the defendant.

After arrest.

If the defendant be in prison under a commitment for want of sureties at the time he enters into the recognizance, then the justice must issue a *liberate* to the gaoler to discharge him.

Supersedeas in the Chancery or Queen's Bench.

Also, it is said that an appearance upon a recognizance for the peace may be superseded, by finding sureties in the Chancery or Queen's Bench, and purchasing a writ testifying the same; but this practice

having been often abused, it was enacted by the 21 Jac. 1, c. 8, that no writs of *supersedeas* shall be granted out of the Chancery or King's Bench but upon motion in open court, and on such sufficient sureties as shall appear on oath to the court to be assessed in the subsidy-book at 5*l.* lands, or 10*l.* in goods; and unless it shall also first appear to the court, that the process of the peace or good behaviour is prosecuted against him, desiring such *supersedeas bonâ fide*, by some party grieved, in that court out of which the *supersedeas* is desired to be awarded. (1 *Haw. c. 60, s. 14.*)

5. *How the Peace-Warrant may be superseded.*

## VI. How the Warrant shall be executed.

As to the execution of warrants in general, *post*, "*Warrant.*"

It can be executed only by the persons to whom it is directed, or some of them, unless it be directed to the sheriff, who may, either by parole or by precept in writing, authorise an officer sworn and known to serve it, but cannot empower any other person without a precept in writing. (1 *Haw. c. 60, s. 11.*)

By whom to be executed.

Where a person, authorised to arrest another who is sheltered in a house, is denied quietly to enter it, in order to take him, it seems generally to be agreed that he may justify breaking open the doors, (among other instances there stated,) upon a *capias* from the King's Bench or Chancery, to compel a man to find sureties for the peace or good behaviour, or even upon a warrant from a justice of the peace for such purpose. (2 *Haw. c. 14, s. 2.*)

Breaking open doors.

But no one can justify the breaking open another's doors to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. (2 *Haw. c. 14, s. 1.* See title "*Warrant.*")

If the warrant specially direct that the party shall be brought before the justice who made it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any justice of such place, the officer has the election to bring him before what justice he pleaseth, and may carry him to prison for refusing to find surety before such justice. (1 *Haw. c. 60, s. 13.*)

What justice to be carried before.

If the warrant be in the common form, directing the officer to cause the party complained of to come before a justice to find sufficient surety, and if he shall refuse so to do, to convey him immediately to prison, without expecting any further warrant, until he shall willingly do the same, the officer who serves it, before he makes any arrest, ought first to require the party to go with him, and find sureties according to the purport of the warrant; but upon refusal to do either, that is, either to go before the justice or to find sureties, he may carry him to the gaol by force of the same warrant, without more. (1 *Haw. c. 60, s. 12; Dalt. c. 118.*)

Whether he may be carried to prison without any further warrant.

And yet the constable or officer may bring him, in that case, before the justice; and if he refuse there to give sureties, he may commit him without further warrant or *mittimus*. (2 *Hale, 112.*)

Nevertheless, notwithstanding these great authorities, it may not be convenient for the justice to leave so much to the constable's judgment as to determine what shall or shall not be deemed a refusal to find such sureties; for that the constable is constituted a judge in such case by no law. And much less doth it seem advisable to require in the warrant, as is usual, that the constable shall carry the party to gaol, if he shall refuse to find *sufficient* sureties. It doth not appear how the constable can any way be deemed a competent judge of that; for it is certain that he cannot administer an oath to such sureties or others, whereby to inform himself of such sufficiency.

Best not to leave the proceeding to the judgment of constable.

If the officer do arrest the party, and do not carry him before the

6. *How the Warrant shall be executed.*

justice to find sureties; or, upon the refusal of the party, if the officer shall arrest him and do not carry him to the gaol; in both these cases the officer is punishable by the justices for this neglect, by indictment and fine at their sessions. And also the party arrested may have his action for false imprisonment for the arrest; for where the officer doth not pursue the effect of his warrant, his warrant will not excuse him of that which he hath done. (*Dalt. c. 118.*)

## VII. How Recognizance may be forfeited, and Proceedings thereon.

What a forfeiture.

There are divers things which may be done against the peace and divers offences for which an indictment against the peace will lie, and yet the committing or doing such offence or act shall be no forfeiture of the recognizance for the peace; for that the act that shall cause a forfeiture of such recognizance must be done or intended unto the person as is aforesaid, or in terror of the people. Therefore to enter into lands where he ought to bring his action; or to disseize another of his lands; or to enter into lands or tenements with force, being without offer of violence to any man's person, and without public terror; or to do a trespass in another man's corn or grass, or to take away another man's goods wrongfully, so it be not from his person; or to steal another man's horse, or other goods feloniously, being not from his person: all these, and the like, are breaches of the peace, and yet these will make no breach of this recognizance, nor breach of the peace within the meaning of the commission of the peace. (*Dalt. c. 121.*)

But the recognizance is forfeited if the party make default of appearance, and the same default shall be recorded. (3 Hen. 7, c. 1.)

However, if the party have any excuse for his not appearing, it seems that the sessions are not bound peremptorily to record his default, but may equitably consider of the reasonableness of such excuse. (1 *Haw. c. 60, s. 18.*)

Sickness of party.

And Mr. *Dalton* says, in case of the sickness of the party, so that he cannot appear, he has known that the justices, upon due proof thereof, have forborne to certify or record such forfeiture or default; and that they have taken sureties for the peace of some friends of his present in court, until the next sessions; for that the principal intent of the recognizance was but the preservation of the peace. But he queries how this is warrantable by their oath. (*Dalt. c. 120.*)

Actual violence.

Also, there is no doubt but that it may be forfeited by any actual violence to the person of another, whether it be done by the party himself, or by others through his procurement: as manslaughter, rape, robbery, unlawful imprisonment, and the like. (1 *Haw. c. 60, s. 20.*)

Threatening words.

Also, it hath been holden, that it may be forfeited by any treason against the king's person, and also by any unlawful assembly, *in terrorem populi*, and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his presence threatening to beat him. (1 *Haw. c. 60, s. 21.*)

Otherwise it is, if the party be absent; and yet, if the party so bound shall threaten to kill or beat a person who is absent, and after shall lie in wait for him to kill or beat him, this is a forfeiture of the recognizance. (*Dalt. c. 121.*)

However, it seems that it shall not be forfeited by bare words of heat and choler, as calling a man a knave, teller of lies, rascal, or drunkard; for though such words may provoke a choleric man to break the peace, yet they do not directly challenge him to it, nor does it appear that the speaker designed to carry his resentment any farther; and it hath been said that even a recognizance for the good behaviour shall not be forfeited for such words; from whence it fol-

lows, *à fortiori*, that a recognizance for the peace shall not. (1 *Haw. c. 60, s. 22.*)

Also, there are some actual assaults on the person of another, which do not amount to a forfeiture of such recognizance: as if an officer, having a warrant against one who will not suffer himself to be arrested, beat, or wound him in the attempt to take him; or if a parent in a reasonable manner chastise his child; or a master his servant, being actually in his service at the time; or a schoolmaster his scholar; or a gaoler his prisoner, or even a husband his wife, as some say; or if one confine a friend who is mad, and bind and beat him, in such a manner as is proper in such circumstances; or if a man gently lay his hands upon another, and thereby stay him from inciting a dog against a third person; or if a man beat another (without wounding him, or throwing at him a dangerous weapon), who wrongfully endeavours with violence to dispossess him of his lands or goods, or the goods of another delivered to him to be kept, and will not desist upon his laying his hands gently on him, and disturbing him; or if a man beat, or (as some say) wound or maim one who makes an assault upon his person or that of his wife, parent, child, or master, especially if it appear that he did all he could to avoid fighting before he gave the wound; or if a man fight with or beat one who attempts to kill any stranger; or if a man even threaten to kill one who puts him in fear of death, in such a place where he cannot safely fly from him; or if one imprison those whom he sees fighting, till the heat is over. (1 *Haw. c. 60, s. 23, 24.*)

As to the proceedings on a forfeited recognizance, see "*Fines*," &c.

7. *How Recognizance may be forfeited, and Proceedings thereon.*

An actual assault in some cases does not amount to a forfeiture.

Proceedings on forfeited recognizance.

## VIII. How Recognizance may be Discharged.

He who is bound to the peace, and to appear at a certain day, must appear at that day and record his appearance, although he who craved the peace cometh not to desire that it may be continued; otherwise the recognizance cannot be discharged. (*Dalt. c. 120.*)

If the recognizance be made to keep the peace generally, without any time or day limited, it shall be construed to be during the party's life; and this the justice may do upon reasonable cause: but if such surety be so taken during the offender's life, neither the king, nor the justice, nor the party, can release or discharge it; and, therefore, the justice must be well advised how he granteth such surety. (*Dalt. c. 119.*)

But it seems to be agreed, that it may be discharged by the death or demise of the queen in whose reign it was taken, or of the principal party who was bound thereby, if it were not forfeited before. (1 *Haw. c. 60, s. 17.*)

By the death of queen.

Also it hath been holden, that it may be discharged by the release of the party at whose complaint it was taken, being certified together with it; but this may justly be questioned, because the recognizance is not to the subject, but to the queen, and consequently cannot be discharged by the subject, who is not a party to it: however, such a release will be a good inducement to the court to which such a recognizance shall be certified, to discharge it. (*Id.*)

Or the release of the party.

It is certain that such a recognizance cannot be pardoned or released by the queen before it be broken, because the subject hath a kind of interest in it; but being forfeited, then the queen and no other, may release and pardon the forfeiture. (*Id.*)

How pardon by queen.

And it is said that the sureties are not discharged by their death, but that their executors continue to be bound as their testators were. (1 *Haw. c. 60, s. 17; Dalt. c. 120.*)

Death of sureties.

8. *How Recognizance may be discharged.*

Party demanding sureties dying.

By court of Queen's Bench on habeas or certiorari.

Likewise, if the party be imprisoned for default of sureties, and after he that demandeth the peace against him happen to die, it seemeth the justice may make his *liberate* or warrant for the delivery of such prisoner; for, after such death, there seemeth no cause to continue the other in prison. Also, any justice may, upon the offer of such prisoner, take surety of him for the peace, and may thereupon deliver him. (*Dalt.* c. 118.)

Where the sessions, upon articles of the peace being exhibited, have ordered sureties to be found, and committed the accused party for want of them, their judgment is not final; but the court of Q. B. on *habeas corpus* and *certiorari* will examine the articles, and, if they are on the face of them insufficient, supersede the order of sessions as made without jurisdiction, and discharge the prisoner. (*R. v. Dunn*, 12 *A. & E.* 599; 4 *P. & D.* 415.)

But the court will not hear affidavits controverting the facts alleged in the articles of the peace. (*Ib.*; *S. P. Reg.* v. *Stanhope*, 12 *A. & E.* 620, *n.*) And the 56 Geo. 3, c. 100, s. 3, does not alter the practice in this respect. (*Id.*)

A party gave information on oath before a magistrate, that from certain language used towards him he was in bodily fear from another, and the magistrate upon hearing the complaint required the latter to enter into recognizances to keep the peace. On motion to discharge the recognizances, on the ground that the language was used in a metaphorical sense only, the court refused to interfere, because it was for the magistrates to judge in what sense the language was used. (*Rex v. Tregarthen*, 5 *B. & Ad.* 678; 2 *Nev. & M.* 379.)

## Surety for the Good Behaviour.

Good behaviour includeth the peace.

A MAN may be compelled to find sureties both for the good behaviour and for the peace; and yet the good behaviour includeth the peace; and he that is bound to the good behaviour is therein also bound to the peace. (*Dalt.* c. 122.)

This surety for the good behaviour being of near affinity to surety for the peace, both as to the manner in which it is to be taken, superseded, and discharged, it seemeth not to require a particular consideration, save only as to two points:

I. *For what Misbehaviour it is to be required*, p. 754.

II. *For what it shall be forfeited*, p. 763.

III. *Forms, List of*, p. 764.

### I. *For what Misbehaviour it is to be required.*

For what misbehaviour it is to be required.

It doth not appear that the conservators of the peace at common law had any power as touching the good behaviour, further than as it had a relation to the peace; and not as it is contradistinguished from it. And it seemeth that the power which the justices of the peace do exercise at this day, in relation thereto, doth solely depend upon the commission of the peace, and the statute of the 34 Edw. 3. c. 1. (Except in some special instances, wherein the power of binding to the good behaviour is given to them by particular statutes, which pertain not to this general title.)

The words in the commission are these: "We have assigned you jointly and severally, and every one of you, our justices, to keep our peace, and to cause to come before you, or any one of you, all those who to any one or more of our people concerning their bodies, or the firing their houses, have used threats; to find sufficient security for the peace or their good behaviour towards us and our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept."

1. *For what Misbehaviour it is to be required.*

Power given to justices by the commission.

The 34 Edw. 3, c. 1, as to this matter runs thus: "In every county shall be assigned for the keeping of the peace one lord, and with him three or four of the most worthy in the county, with some learned in the law; and they shall have power to restrain the offenders, rioters, and all other barrators, and to pursue, arrest, take, and chastise them according to their trespass or offence; and to cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement; and also to inform them, and to inquire of all those that have been pillors and robbers in the parts beyond the sea, and be now come again, and go wandering, and will not labour as they were wont in times past; and to take and arrest all those that they may find, by indictment, or by suspicion, and to put them in prison; and to take of all them that be not of good fame, where they shall be found, sufficient surety and mainprize of their good behaviour towards the king and his people, and the other duly to punish; to the intent that the people be not by such rioters or rebels troubled nor endangered, nor the peace blemished, nor merchants nor others passing by the highways of the realm disturbed, nor put in the peril which may happen of such offenders."

Power given by statute.

This statute seems to have had in view chiefly the disorders to which the country was then liable, from great numbers of disbanded soldiers, who having served abroad in the wars of that victorious king, were grown strangers to industry, and were rather inclined to live upon rapine and spoil. (*Barl.* 524.)

But whatever the natural and obvious sense of it may be when compared with the history and circumstances of those times, it is certain that it hath been carried much further by construction, and the purport of it hath been extended by degrees, until at length there is scarcely any other statute which hath received such a largeness of interpretation.

And that I may proceed with clearness in a matter so essential to the office of a justice of the peace, I will set down the several expositions which have been given of this statute from time to time by learned men, and then raise such observations thereupon as the subject will naturally suggest.

Observations of learned men on the subject.

The first unfolding of the sense of this statute which has occurred, was in the case of *Sir Richard Croftes* and *Sir Richard Corbet*, in the second year of the reign of King Henry VII., wherein it was resolved by all the judges, for that purpose assembled, that he who is bound to the good behaviour ought not to do any thing which shall be cause of breach of the peace, or to put the people in fear, dread, or trouble: and so shall be intended of all things which concern the peace: but not in misdoing of other things which touch not the peace. Yet a diversity was observed between a breach of the peace and a breach of the good behaviour, for the peace is not broken without an affray or battery, but the good behaviour may be forfeited by the number of people a man has, and by their harness or weapons, and the like, although they break not the peace. (2 Hen. 7, c. 2.)

Surety of good behaviour relates to matters concerning the peace.

The second instance, and upon which much stress hath been laid, was in the 13th year of the same king. In trespass of assault, battery, and imprisonment at D., the defendant saith that one *Alice B.* had a

May be had of persons frequenting bawdy-houses.



1. *For what Misbehaviour it is to be required.*

Opinion of Fitzherbert that it may be taken by one justice only.

Abusive words and common trespass not a breach of recognizance.

house in the same town, and kept there suspicious people, to wit, of common bawdry, and that the plaintiff oftentimes resorted to the same house suspiciously with women of bad fame and name, whereby the constable of the same town required the defendant to aid him to arrest the plaintiff, to find surety of his good behaviour; whereby the defendant came with the said constable at the hour of twelve in the night, and him found suspiciously in the same place; whereupon he took him and put him in ward; and it was holden by all the justices to be a good justification; for they said, that it is lawful for every constable to take suspected persons, which wake in the night and sleep in the day, or that keep suspicious company. (13 Hen. 7, c. 10.)

In the next place, Sir *Anthony Fitzherbert*, who lived in the reign of King Henry VIII., saith, that it seemeth that one justice may, by the commission, issue a warrant against a person to find surety of the good behaviour, by his discretion, as well as two justices may; and the words of the statute of the 34 Edw. 3, are to the same effect. Otherwise, he says, damage may happen to some of the king's subjects, if the party be not attached, before that two justices have made the precept; yet, he says, the common usage is, to make such precept of the good behaviour in the name of two justices, and it is good to observe this direction. (*Fitz.* 7; see *Crompt.* 122, 126.)

In the next place, it is proper to take notice of a case adjudged in the court of Queen's Bench, in the 30th of Queen Elizabeth, reported by Lord *Coke*, 4 *Inst.* 181, which was thus:—At the sessions at Bridgewater, in the county of Somerset, one *William King* with sureties was bound by recognizance to appear at the next general sessions of the peace in the same county, and in the meantime to be of the good behaviour towards the queen and all her people. And after, at the next sessions, *William King* appeared, and was indicted for slanderous words spoken since his binding, to wit, for saying at one time to *Edward Kyrton*, esq., "*Thou art a pelter, thou art a liar, and hast told my lord lies.*" And he was further indicted, that since the said recognizance, "*the close of one John Wick with force and arms he broke and entered, and the cattle of the said John depasturing in the said close unlawfully vexed and chased.*" And afterwards, at another time, he said to the said *Kyrton*, "*Thou art a drunken knave.*" Which indictment was removed into the Queen's Bench. And hereupon it was debated divers times, both at the bar and the bench, whether, admitting all that is contained in the indictment to be true, anything therein was, in judgment of law, a breach of the said recognizance. And it was resolved, that neither any of the words, nor the trespass, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace: for though the said words, "*Thou art a liar, thou art a drunken knave,*" are provocations, yet they tend not immediately to the breach of the peace; as if *William King* had challenged *Kyrton* to fight with him, or had threatened to beat or wound him, or the like; these tend immediately to the breach of the peace, and are therefore breaches of the recognizance of the good behaviour. And this diversity (*Lord Coke* says) was justly collected upon the coherence and context of the statute of the 34 Edw. 3, whereby justices are assigned for keeping the peace, and to restrain the offenders, rioters, and all other barrators, and to chastise them according to their trespass and offence; and to inquire of pillors and robbers in the parts beyond the seas, and be now come again, and go wandering, and will not labour. And thus much for the punishment of offences against the peace after they be done. Then followeth an express authority given to justices, for prevention of such offences before they be done, namely, "*and take of all them that be not of good fame*" (that is, that be defamed and justly suspected that they intend to break the peace), "*where they shall be found, sufficient surety and mainprize of their good behaviour towards*

*the king and his people*" (which must concern the king's peace, as is also provided by the words subsequent), "*to the intent that the people be not by such rioters troubled or endamaged, nor the peace blemished, nor is to be required. merchants nor others passing by the highways disturbed nor put in peril that may happen of such offenders.*" And as for the trespass: although every wrongful trespass is by force and arms, and against the peace, yet these are not taken to be such as shall make a breach of the good behaviour.

After this, Mr. *Lambard*, who wrote towards the beginning of the reign of King James the First, saith thus:—*Surety of the good abearing is of great affinity with that of the peace, as being provided for preservation of the peace, as that other is; for in the commission of the peace they are both conveyed under one tract of speech, against such as threaten to hurt men's bodies, or fire their houses; which things (he says) are now commonly prevented by surety of the peace only.* (*Lamb. 115.*)

Opinion of Lambard.

And in 2 Hen. 7, c. 2 (above recited), the surety of the good abearing is set forth to rest in this point chiefly, that a man do nothing that may be cause of a breach of the peace; and that it doth not consist in the observation of things that concern not the peace; and that it should differ from surety of the peace in this, that where the peace is not broken without an affray, or battery, or such like, the surety may be broken by the number of a man's company, or by his or their weapons or harness.

Of whom surety may be required.

And herewithal (he says) do also agree certain precedents in the Queen's Bench.

But all this notwithstanding, he thinks that a man may reasonably affirm, that the surety of good abearing should not be restrained to so narrow bounds.

In proof of which he proceeds to comment on the above-mentioned statute of the 34 Edw. 3, enabling the keepers of the peace "*to take of them all that be not of good fame, where they shall be found, sufficient surety and mainprize of their good abearing towards the king and his people;*" so that, if a man be defamed, he may, by virtue hereof, be bound to his good behaviour at the discretion of the justices. Now, the doubt resteth in this—to understand concerning what matters this defamation must be: and this (he thinks) may be partly gathered out of the said statute; for after it hath first given power to the wardens of the peace to arrest and chastise offenders (that is to say, against the peace, rioters, and barrators), then it willeth them to, "*inquire of such as, having been robbers beyond the sea, were come over hither, and would not labour as they were wont;*" and, lastly, it authorises them "*to take surety of the good behaviour of such as be defamed,*" namely, for any of those former offences; for so it standeth well together that they should both punish such as have already so offended, and shall also provide that others shall not likewise offend.

But he says, the further this bond of the good abearing doth extend the more regard there ought to be taken in the awarding of it; and therefore (says he) although the justices have power to grant it, either by their own discretion or upon the complaint of others, even as they may that of the peace, yet I wish rather that they do not command it but only upon sufficient cause seen to themselves, or upon the complaint of other very honest and credible persons.

On sufficient cause.

And then being about to set forth the form of a warrant, and of a recognizance for the good behaviour, he says, "And here, forasmuch as one justice alone, and out of sessions, may both, by the first clause of the commission, and also by the opinion of *Fitzherbert*, grant this surety of the good abearing (although the common practice be, that two such justices do join in that doing, whereof also *Fitzherbert* hath very good liking), I will not stick to set forth the common forms, as well of the precept as of the recognizance for the same, wherein if I shall use the names of two justices, you must take that to be done

One justice may take the surety.

1. *For what Misbehaviour it is to be required.*

according to the common fashion and not of any necessity in law. For as I would more gladly use the assistance of a fellow-justice in this behalf, if I may conveniently have it, so if that may not be gotten, I would not greatly fear, when good cause shall require, to undertake the thing myself alone."

For immoral Practices.

"And besides this," he says, "you may see admitted by the opinion of the court, 13 Hen. 7, that if a man in the night season haunt a house that is suspected for bawdry, or use suspicious company, then may the constable arrest him to find surety for his good abearing; for bawdry is not merely a spiritual offence, but mixed and sounding somewhat against the peace of the land."

"And, therefore," says he, "it shall not be amiss at this day, in my slender opinion, to grant surety of the good abearing against him that is suspected to have begotten a bastard child, to the end that he may be forthcoming when it shall be born; for otherwise there will be no putative father found, when the justices shall, after the birth, come to take order for his punishment." (*Lamb.* 119.)

Opinion of Pulton.

In the next place, Mr. *Pulton*, who lived about the same time with Mr. *Lambard*, writeth thus:—"The surety of the good abearing is ordained for the preservation of the peace, and it doth differ in nothing from that of the peace, but that there is more difficulty in the performance of it, and the party bound may sooner slide into the peril and danger of it. The surety of good abearing is most commonly granted in open sessions, or by two or three justices: or upon a *supplicavit*, and great cause shown and proved, it is granted in the Chancery or Queen's Bench. And though one justice alone may grant it if he will, yet it is seldom done so, unless it be to prevent some great, sudden, and imminent enormity or danger. The surety of the peace is most times taken at the request of one for the preservation of the peace chiefly against one. But the surety for the good abearing is oftentimes granted at the suit of divers, and those must be men of credit, and to provide for the safety of many; for the effect and purport thereof is, that the party bound shall demean himself well in his port, behaviour, and company, and do nothing that may be the cause of breach of the peace, or in putting the people in fear or trouble; and it is chiefly granted against common barrators, common rioters, common quarrellers, common peace-breakers, and persons greatly defamed for resorting to houses suspected to maintain incontinency or adultery, and against those that be generally feared to be robbers or spoilers of the queen's people, or which do endamage, disturb, trouble, or put in peril passengers by the way." (*Pult.* 18.)

Nature of surety.

Opinion of Dalton.

Afterwards, Mr. *Dalton*, who wrote towards the latter end of the reign of King James the First, says, "The surety of good behaviour is of great affinity with that of the peace, and is provided chiefly for the preservation of the peace; and is most commonly granted either in the open sessions, or by two or three justices out of sessions. Yet by the words of the commission, as also by the common opinion of the learned, one justice alone out of sessions may grant this surety of the good behaviour. But this is not usual, unless it be to prevent some great and sudden danger, especially against a man that is of any good estate, carriage, or report. And it shall be good discretion in the justices that they do not grant it, but either upon sufficient cause seen to themselves, or upon the suit or complaint of others, and the same very honest and credible persons." (*Dalt. c.* 123.)

Opinion of Hawkins.

In the next place, Mr. *Hawkins*, who wrote in the reign of King George the First, saith thus:—"There seem to have been some opinions that the statute, speaking of those that be 'not of good fame,' means only such as are defamed and justly suspected that they intend to break the peace, and that it does not any way extend to those who are guilty of other misbehaviours not relating to the peace. But this seems much too narrow a construction; since the above-mentioned

expression of persons of 'evil fame,' in common understanding, as properly includes persons of scandalous behaviour in other respects, as those who by their quarrelsome behaviour give just suspicion of their readiness to break the peace; and accordingly it seems always to have been the better opinion, that a man may be bound to his good behaviour for many causes of scandal, which give him a bad fame, as being contrary to good manners only: as for haunting bawdy-houses with women of bad fame; or for keeping bad women in his own house; or for speaking words of contempt of an inferior magistrate, as a justice of the peace, or mayor, though he be not then in the actual execution of his office; or of an inferior officer of justice, as a constable and such like, being in the actual execution of his office." (1 *Haw. c. 61, s. 2.*)

1. For what Misbehaviour it is to be required.

May be required of those who lead ill lives.

Who abuse justices, &c.

"However, it seems the better opinion, that no one ought to be bound to the good behaviour for any rash, quarrelsome, or unmanly words, unless they either directly tend to a breach of the peace, or to scandalize the government, by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore it seems that he who barely calls another rogue or rascal, or teller of lies, or drunkard, ought not for such cause to be bound to the good behaviour." (1 *Haw. c. 61, s. 3.*)

"However," says he, "I cannot find any certain precise rules for the direction of the magistrate in this respect; and therefore am inclined to think, that he has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous; as of those who sleep in the day and go abroad in the night; and of such as keep suspicious company; and of such as are generally suspected to be robbers, and the like; and of eves-droppers; and common drunkards; and all other persons, whose misbehaviour may reasonably be intended to bring them within the meaning of the statute, as persons of evil fame, who being described by an expression of so great latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties, he must show the cause with convenient certainty." (1 *Haw. c. 61, s. 4.*)

Quarrelsome and dangerous persons.

And thus the sense of the statute hath been extended not only to offences immediately relating to the peace, but to divers misbehaviours not directly tending to a breach of the peace; insomuch as it is become difficult to define how far it shall extend, and where it shall stop.

Mr. Dalton, in order to determine the same with some kind of certainty hath (notwithstanding his opinion as above-mentioned) inserted a number of instances, wherein sureties of the good behaviour may be granted; and they are these that follow: (a)

Against whom in general sureties of the good behaviour may be granted.

1. Against rioters.
2. Barrators.
3. Common quarrellers, and common breakers of the peace.
4. Such as lie in wait to rob, or shall be suspected to lie in wait to rob, or shall assault, or attempt to rob another, or shall put passengers in fear or peril, or shall be generally suspected to be robbers by the highway.
5. Such as are like to commit murder, homicide, or other grievances, to any of the king's subjects in their bodies.
6. Such as shall practise to poison another; one instance of which may be the poisoning of their food. Thus, Mr. Dalton granted the good behaviour against one who had bought ratsbane, and mingled it

(a) And see the respective titles as to these offences throughout this work.

1. For what  
*Misbehaviour it*  
*is to be required.*

with corn, and then cast it among his neighbour's fowls, whereby most of them died.

7. Such as in the presence and hearing of the justice shall misbehave themselves in some outrageous manner of force or fraud.

8. Such as are greatly defamed for resorting to houses suspected to maintain adultery or incontinency.

9. Maintainers of houses commonly suspected to be houses of common bawdry.

10. Common whoremongers and common whores; for bawdry is an offence temporal as well as spiritual, and is against the peace of the land.

11. Night-walkers and eves-droppers.

12. Suspected persons, who live idly, and yet fare well, or are well-apparelled, having nothing whereon to live: unless upon examination they shall give a good account of such their living.

13. Common gamesters, especially if they have not whereon to live.

14. Such as raise hue and cry without cause.

15. Libellers.

16. Putative father of a bastard child.

17. Such as persuade or procure the putative father to run away, or the mother to be conveyed away, whereby she leaveth her child to the charge of the town.

18. Such as abuse a justice's warrant, or shall abuse him or the constable in executing their offices. Nay, it seemeth, he says, that he who shall use words of contempt, or contrary to good manners, against a justice of the peace, though it be not at such a time as he is executing his office, yet he shall be bound to his good behaviour.

19. Such as charge another before a justice with felony, riot, or forcible entry, and yet will not prosecute or give evidence.

20. In general, whatsoever act or thing is of itself a misbehaviour, is cause sufficient to bind such an offender to the good behaviour. (*Dalt. c. 124.*)

To which others have added other instances; as—

21. Forcible entry. (*1 Haw. c. 64, s. 8.*)

22. Mr. *Hawkins* says, "that he hath heard it agreed in the court of King's Bench, that a writing full of obscene ribaldry, without any kind of reflection upon any one, is not punishable at all by any prosecution at common law; yet it seems," he says, "that the author may be bound to his good behaviour, as a scandalous person of evil fame." (*1 Haw. c. 73, s. 9.*)

23. A man did beat a woman in Westminster Hall, and he was bound to the good behaviour; and so, says Mr. *Crompton*, "he may be bound to the peace and good behaviour, where he striketh a person in the presence of the justices in sessions." (*Crompt. 124.*)

24. A man was bound to the good behaviour by the Court of King's Bench, for assaulting and threatening a person, so that he could not attend the court in suit there, without great cost. And so it seemeth that it may be done where one cometh to the sessions about a traverse to be tried there, or to prefer a bill of indictment, if he be assaulted or threatened. (*Crompt. 125.*)

Observations by  
Dr. Burn.

I have omitted to make any remarks in the progress of these authorities, being willing to exhibit them together, in one view; I proceed now to take notice of such observations as do occur upon the whole.

Power of one  
justice.

First, It appears from hence, that the universal practice of one justice binding to the good behaviour is but of a modern date; although the law for it is the same now that it was near four hundred years ago; and that it was a long time doubted whether one justice alone could require sureties of the good behaviour. But here a distinction ought to be made between the power given by the commission of the peace and the power given by the above-mentioned statute: as to the

commission, there seemeth to be no foundation for any doubt, but that thereby one justice alone may require such sureties: for the words are express, "We have assigned you, jointly and severally, and every one of you:" but then that extends only to two instances, namely, to "the threatening of a person concerning his body, or the firing of his house." As to the statute, the doubt seems to have arisen upon this; in that, having appointed who shall be assigned for justices, it then directed that "they shall have power to restrain offenders;" and it is holden, Mr. *Lambard* hath observed, "that if no power be expressly given by any statute to any one justice alone, he cannot otherwise compel the observation thereof, than by the help of his fellow-justices." And Mr. *Hawkins*, speaking hereof in the case of riots, says, "that if one justice alone, proceeding upon this statute, shall arrest an innocent person as a rioter, it seemeth that he is liable to an action of trespass, and that the party arrested may justify the rescuing of himself; because no one single justice is by this statute made a judge of the said offence: yet, nevertheless," he says, "by a favourable construction which this statute hath received for the advancement of justice, it hath been resolved, that any one justice, upon this statute, 'if he find the persons riotously assembled,' may without staying for his companions, arrest the offenders, and bind them to their good behaviour."

1. For what Misbehaviour it is to be required.

Secondly, It seemeth, from what hath been rehearsed, that the words, "not of good fame," were generally understood for a long time to refer to such offences only as have a relation to the peace, and not to other things which concern not the peace.

Extension of cases in which surety may be required.

Thirdly, That one great inlet to the larger, and at length almost unlimited interpretation of the words, was the case above mentioned, 13 Hen. 7, wherein it was adjudged to be lawful to arrest a man for the good behaviour, for frequenting a suspected bawdy-house, with women of bad fame. And this is the reason which Mr. *Dalton* gives for many of his instances above specified,—namely, that they are more properly against the peace than this same case of avoutry. (*Dalt. c. 124, p. 289.*)

Fourthly, That when once the gap was opened for the admission of other offences not immediately relating to the peace, they flowed in and multiplied. Thus in the case of bastardy, having some affinity with the other, of frequenting bawdy-houses, Mr. *Lambard* thought that with equal reason, the reputed father of a bastard child might be bound to the good behaviour; and in a few years after, Mr. *Dalton* delivers it absolutely, that he may be so bound.

Fifthly, That therefore, the natural and received sense of any statute ought not to be departed from without extreme necessity; for that one concession will make way for another, and the latter will plead for the same right of admission as the former.

Sixthly, That, notwithstanding the aforesaid instances given by Mr. *Dalton* and others, it may not be safe in all cases to rely upon every one of them without distinction; not only because it is almost impossible for any two cases to be exactly alike in all other circumstances, but also because in fact divers of them, at different times, have been adjudged otherwise; and others have not prevailed without much difficulty and contradiction in the courts above, and perhaps, were at length admitted rather from the conveniency and reasonableness of the thing itself, and from an indulgence usually allowed to those gentlemen who serve their country without gain, and oftentimes with much trouble, than from any clear, positive, and express power given to them by the commission, or by the said statute.

Seventhly, That, notwithstanding all which hath been said, perhaps the case before recited, concerning the frequenting of a suspected bawdy-house, will not support the weight which so many authors have laid upon it. For the question, whether a justice of the peace

1. For what  
Misbehaviour it  
is to be required.

had cognizance of the offence by virtue of the commission of the peace, or of the statute of the 34 Edw. 3, was no part of the dispute; for it was an arrest by the constable *ex officio*, as a conservator of the peace at common law, and without any warrant from a magistrate; and the question was not whether the constable might require sureties for the good behaviour, as a thing different from sureties for the peace, but whether in that case he could arrest at all or not.

And if the authority of this case shall be abated, several of the above-mentioned instances will abate in proportion.

Eighthly, It is to be observed, that others of the above said instances were established upon matters originally determined in the court of King's Bench, and Mr. *Crompton* himself refers to the authority and practice of that court in several instances. (*Crompt.* 120.) But it doth by no means follow, from what the justices of the court of King's Bench may do, that the justices of the peace may do the like; for their authority is circumscribed and limited by their commission and the statute law.

Binding to good  
behaviour after a  
common law con-  
viction.

Ninthly, That it will perhaps abate some other of the foregoing instances, if we attend to this consideration: that there is a great difference between what the justices in sessions may do, after a conviction by a jury, for an offence committed, and what a single justice out of the sessions may do, before an offence is committed, and to prevent the same from being committed; or what a single justice may do, upon a summary conviction before him, for an offence, as directed by some special act of parliament. The truth is, binding to the good behaviour was a discretionary judgment at the common law, given by a court of record for an offence at the suit of the king, after a common law conviction by verdict of twelve men. Trial by his peers is the Englishman's birthright by the great charter, and cannot be taken away but by an authority equal to that which established it,—that is, by act of parliament: and, therefore, where an act gives a summary conviction before a justice of the peace, and inflicts a punishment upon such conviction, such statute must be pursued both as to the conviction and punishment. And it seemeth incongruous, that a justice of the peace shall have power to bind a man to the good behaviour, for an offence which he himself hath no power to hear and determine; for that is, in effect, giving judgment, and awarding execution, when it doth not and cannot legally appear to him that the person is guilty.

Great caution re-  
commended.

Tenthly, That, therefore, upon the whole, it may be proper to conclude, that the magistrate, in this article of the good behaviour, cannot exercise too much caution and good advisement; that in matters which the law hath left indefinite, it is better to fall short of than to exceed his commission and authority; that to bind a man to the good behaviour upon the statute for *evil fame* in general may not always be with safety: not only because upon an action brought it may be hard to prove such evil fame, but also because in fact it is not always true, for many a good man hath been evil spoken of; that although, in some cases, a justice of the peace may have a *discretionary* power (as Mr. *Hawkins* expresseth it), yet he must remember withal that it is a *legal* discretion, as Mr. *Barlow* terms it, in which, in favour of liberty, great tenderness is to be used; or, as Lord *Coke* hath defined it, discretion is a knowledge or understanding to discern between truth and falsehood, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to our wills and private affections; and such discretion ought to be limited and bounded with the rules of reason, law and justice. (5 *Rep.* 100; *Keighley's case*, 10 *Rep.* 140.)

Discretion defined.

For libels on pri-  
vate persons.

In *Haylock v. Sparke*, 22 *L. J. M. C.* p. 87, (1853,) where an informant on oath deposed to a justice as to words written by a person on the pavement, which were offensive and calculated to produce a

breach of the peace, as reflecting on another's character, the writer of the words was by the justice ordered and adjudged to enter into recognizances with sureties to "keep the peace" for three calendar months. Held, that it must be taken that the justice intended to require sureties "for good behaviour," notwithstanding the words "to keep the peace" which were in the warrant of commitment for refusing, and also that a justice of the peace has jurisdiction to require sureties for good behaviour in some cases of libel against private individuals; and the authority of *Dalton*, c. 124, was then cited: "That libellers also may be bound to their good behaviour as disturbers of the peace, whether they be contrivers, procurers, or publishers of the libel; for such libelling and defamations tendeth to the raising quarrels and effusion of blood, and especial means and occasions tending and inciting greatly to the breach of the peace." For this position, however, *Dalton* cites a case in the Star-Chamber of Easter term, 3rd of James 1st, reported by *Coke*, part 5, *Reports*, p. 125, where he says it was resolved among other points, that a libel against a private man deserves a severe punishment, for although the libel be made against one, yet it incites all those of the same family, kindred, or society, to revenge, and so tends, *per consequens*, to quarrels and breach of the peace, and may be the cause of shedding of blood and of great inconvenience.

1. For what Misbehaviour it is to be required.

## II. For what it shall be forfeited.

This hath been handled in part as it fell in with the former section; and agreeably to the doctrine there laid down, Mr. *Dalton* says, that he who is bound to the good behaviour ought to demean himself well in his carriage, and in his company, not doing anything which shall be a cause of breach of the peace, or to put the people in fear, dread, or trouble; and so shall be intended of all things which concern the peace, but not in misdoing of other things which touch not the peace. (*Dalt. c. 122.*)

And Mr. *Hawkins* saith, it hath been laid down as a general rule, that whatever will be a good cause to bind a man to his good behaviour will forfeit a recognizance for it: but that this hath since been denied, and indeed seems by no means to be maintainable, because the statute, in ordering persons of evil fame to be bound in this manner, seems, in many places, chiefly to regard the prevention of that mischief which they may justly be suspected to be likely to do; and in that respect requires them to secure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in such cases to make persons forfeit their recognizances, who yet may justly be compellable to give one, as those who keep suspicious company, or those who spend much money idly, without having any visible means of getting it honestly, or those who lie under a general suspicion of being rogues, and the like. (1 *Haw. c. 61, s. 5.*)

However, it seems that such a recognizance shall not only be forfeited for such actual breaches of the peace for which a recognizance for the peace may be forfeited, but also for some others, for which such a recognizance cannot be forfeited: as, for going armed with great numbers to the terror of the people, or speaking words tending to sedition; and also for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what, perhaps, may never actually happen. (1 *Haw. c. 61, s. 6.*)



## 3. Forms.

## III. Forms (List of).

INFORMATION before a Justice out of Sessions, to require Surety of the Peace or Good Behaviour. (No. 1.)

WARRANT thereon. (No. 2.)

WARRANT for Good Behaviour on 34 Edw. 3, c. 1. (No. 3.)

COMMITMENT for want of Sureties, for a limited period. (No. 4.)

COMMITMENT for want of Sureties, to appear at the Sessions. (No. 5.)

RECOGNIZANCE for the Peace or Good Behaviour. (No. 6.)

LIBERATE to discharge one committed for want of Sureties to keep the Peace. (No. 7.)

SUPERSEDEAS. (No. 8.)

LIBERATE to discharge one committed for want of Personal Appearance at the Sessions. (No. 9.)

ARTICLES of the Peace exhibited at Sessions. (No. 10.)

ARTICLES of the Peace exhibited in the King's Bench. (No. 11.)

(1.) Information before a justice out of sessions, to require surety of the peace or good behaviour.

——— } *Be it remembered, that on, &c., A. B., of* , *in the said county of to wit,* , *[gentleman,] came personally before me, J. P., one of her Majesty's justices of the peace in and for the said county, at, &c., and on his oath informeth me, that C. D., of, &c. [labourer], did, on, &c., at, &c., most violently and maliciously declare and threaten, &c., and did also on, &c. [here state the defendant's threats and acts; see Form, No. 11]; and that from the above premises, he, this complainant, is afraid that the said C. D. will do him some grievous bodily injury;\* and therefore prays that the said C. D. may be required to find sufficient sureties to keep the peace [or, "to be of good behaviour," as may be required; see Form, post (No. 6)] towards him this complainant. And this complainant also says, that he doth not make this complaint against, nor require such sureties from, the said C. D. from any hatred, malice, or ill-will, but merely for the preservation of his life and person from injury.*

*Sworn before me, J. P.*

*A. B.*

(2.) Warrant thereon.

*To E. F., Constable of* , *in the said county, and all others whom this may concern.*

*Whereas A. B., of* , *in the said county [gentleman], hath this day made information on oath before me, J. P., one of her Majesty's justices of the peace in and for the said county, at, &c., that C. D., of, &c. [labourer], did, on, &c., at &c. [here set forth the complaint, as in the above Form to the\*, in the past tense, describing the complainant by his name]; and therefore the said A. B. hath prayed that the said C. D. may be required to find sufficient sureties to keep the peace [or, "be of good behaviour," as the case may be] towards him, the said A. B.; I do, therefore, hereby require and command you to apprehend and bring the said C. D. before me, or some other of her Majesty's justices of the peace for the said county, on, &c., at, &c., to answer the said complaint, and to find sufficient sureties to keep the peace [or, "be of good behaviour"] towards her Majesty and all her liege people, and especially towards the said A. B., for such term as shall be then enjoined him, and to be further dealt with according to law. Given under my hand and seal, the* day of , *&c.*

*J. P. (L. S.)*

(3.) Warrant for the good behaviour, on the 34 Edw. 3, c. 1 (a).

*County of* } *J. T., esq., and T. L., esq., justices of our lady the Queen, assigned*  
 ——— } *to keep the peace within the said county, to the sheriff of the said county, to the constable of the hundred of* , *in the said county, to the petty constables of the town of* , *in the said county, and to all and singular the bailiffs, constables, and other officers of our said lady the Queen, as well within liberties as without, in the same county, greeting:*

*Forasmuch as we are given to understand, by the information, testimony, and complaint of many credible persons, that A. O., of* , *in the county aforesaid [gentleman], and B. O., of the same [yeoman], are not of good name and fame, nor of honest conversation, but evil doers, rioters, barrators, and disturbers of the*

peace of our said lady the Queen, so that murder, homicide, strifes, discords, and other grievances and damages amongst the lieges of our said lady the Queen, concerning their bodies, are likely to arise thereby: therefore, on the behalf of our said lady the Queen, we command you, and every of you, that you omit not by reason of any liberty within the county aforesaid, but that you attach, or one of you do attach, the aforesaid A. O. and B. O., so that you have them before us, or others our fellows, justices of our said lady the Queen, assigned to keep the peace within the county aforesaid, as soon as they can be taken [or, "before the justices of our said lady the Queen, assigned to keep the peace within the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, at the next general quarter sessions of the peace to be holden in and for the said county"], to find then before us [or, "the said justices"], sufficient surety and mainprize for their good behaviour towards our said lady the Queen and all her people, according to the form of the statute in such case made and provided. And this you shall in nowise omit, on the peril that shall ensue thereon. And have you before us [or, "before the said justices, at the sessions aforesaid"] this precept. Given under our seals, at, &c. the            day of            , &c.

## 3. Forms.

County of } To E. F., the Constable of            , in the said county, and also to (4.) Commitment  
                   } the keeper of her Majesty's gaol [or, house of correction, at            ] for for want of sureties by the  
 the said county, and others whom this may concern. justice.

Whereas, A. B., of, &c. [here recite the complaint as in the warrant, ante, No. 2]; and whereas the said C. D. was this day brought and appeared before me, J. P., one of her Majesty's justices of the peace in and for the said county, at, &c., to answer the said complaint: and I, the said justice, have ordered and adjudged, and do hereby order and adjudge, that the said C. D. shall enter into his own recognizance in the sum of [100*l.*], with two sufficient sureties in the sum of [50*l.*] each, to keep the peace [or, "be of good behaviour," as the case may be] towards her Majesty and all her liege people, and particularly towards the said A. B., for the term of [twelve calendar months] now next ensuing. And, inasmuch as the said C. D. hath refused and still refuses to enter into such recognizance, and to find such sureties as aforesaid, I do hereby require and command you, the said constable, forthwith to convey the said C. D. to the common gaol [or, house of correction at            ] of the said county, and to deliver him to the keeper thereof, together with this warrant. And I do also require and command you, the said keeper, to receive the said C. D. into your custody in the said gaol, and him there safely to keep for the space of [twelve calendar months], unless he, in the meantime, enter into such recognizance with such sureties, as aforesaid, to keep the peace in the manner and for the term above mentioned. Herein fail not. Given under my hand and seal, the            day of            , &c.

J. P. (L. S.)

County of } To E. F., the Constable of            , in the said county, and also to (5.) Commitment  
                   } the keeper of her Majesty's gaol [or, house of correction, at            ], for for want of sureties to appear at  
 the said county, and all others whom this may concern. the sessions.

Whereas [here recite the complaint, as in the Form of warrant, ante, No. 2]; and whereas the said C. D. having been this day brought and appeared before me, the said justice [or, J. P., one of her Majesty's justices of the peace in and for the said county], to answer the said complaint, and having been required by me to find sufficient sureties, as well for his appearance at the next general quarter sessions of the peace to be held for the said county, to do what shall be then and there enjoined him by the court, as also in the meantime to keep the peace [or, "be of good behaviour," as the case may be] towards her Majesty and all her liege people, and especially towards the said A. B., hath refused and neglected, and still refuses and neglects, to find such sureties; I do therefore hereby require and command you, the said constable, forthwith to convey the said C. D. to the common gaol [or, house of correction, at            ], of the said county, and to deliver him to the keeper thereof, together with this warrant. And I do also require and command you, the said keeper, to receive the said C. D. into your custody, and him there safely to keep until the next general quarter sessions of the peace to be held for the said county, unless he in the mean-

## 3. Forms.

time find sufficient sureties as well for his appearance at the said sessions as in the meantime to keep the peace as aforesaid. Given under my hand and seal, the day of , &c.

J. P. (L. S.)

## (6.) Recognizance for the peace or good behaviour.

County of } Be it remembered, that on &c., A. O., of , in the county  
— } aforesaid [yeoman], A. S., of the same place [yeoman], and B. S., of the same place [yeoman], came before me, H. C. [doctor of laws], one of the justices of our said lady the Queen, assigned to keep the peace in and for the said county, and acknowledged themselves to owe to our said lady the Queen, to wit, the said A. O. the sum of [20l.], and the said A. S. the sum of [10l.], and the said B. S. the sum of [10l.] of good and lawful money of Great Britain, to be respectively made and levied of their several goods and chattels, lands, and tene-ments, to the use of our said lady the Queen, her heirs and successors, if he, the said A. O., shall fail in performing the condition underwritten.

Acknowledged before me, H. C.

If the party be bound merely to keep the peace, or be of good behaviour, for a specified time, the condition will be thus: The condition of this recognizance is such, that if the above bounden A. O. shall keep the peace [or, "be of good behaviour," as the case may be] towards the Queen and all her liege people, and especially towards A. I. of , in the said county [gentleman], for the term of [twelve calendar months] now next ensuing, then the said recognizance shall be void, or else remain in its force.

If the party be bound to appear at the sessions, the condition of the recognizance will be thus: The condition of this recognizance is such, that if the said C. D. shall personally appear at the next general quarter sessions of the peace to be holden for the said county, to do and receive what shall be then and there enjoined him by the court, and, in the meantime, shall keep the peace [or, "be of good behaviour"] towards her Majesty and all her liege people, and especially towards the said A. B. Then, &c.

## (7.) Liberate to discharge one committed for want of sureties to keep the peace.

County of } To E. F., the keeper of her Majesty's gaol [or, house of correction,  
— } at , ] for the said county, and others whom this may concern.

You are hereby commanded to discharge out of your custody the body of A. O. of , in the said county [labourer], he having this day entered into a recognizance before me, J. P., one of her Majesty's justices of the peace in and for the said county, in the sum of [100l.], with two sureties in [50l.] each, to keep the peace, [or, "be of good behaviour," as the case may be] towards her Majesty and all her liege people, and especially towards A. B. of , &c. [gentleman], for the space of [twelve calendar months] now next ensuing. Given under my hand and seal, the day of , &c.

## (8.) Supersedeas.

County of } J. R., esq., one of the justices of our lady the Queen, assigned to  
— } keep the peace in and for the county aforesaid, to the sheriff, bailiffs, constables, and others, the faithful ministers and subjects of our said lady the Queen within the said county, and to every of them greeting:

Forasmuch as A. O., of , in the said county [yeoman], hath personally come before me at, , in the said county, and hath found sufficient surety, that is to say, A. S. of , [yeoman], and B. S. of , [yeoman], either of which hath undertaken for the said A. O., under the pain of [20l.], and he, the said A. O. hath undertaken for himself, under the pain of [40l.], that he, the said A. O. shall personally appear at the next general quarter sessions of the peace to be holden in and for the said county, then and there to do and receive what shall be enjoined him by the said court: and, in the meantime, shall well and truly keep the peace [or, "be of good behaviour," as the case may be] towards our said lady the Queen and all her liege people, and especially towards A. I. of , [yeoman]; therefore, on the behalf of our said lady the Queen, I do command you, and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any means for the said cause to molest the said A. O.; and if you have, for the said occasion, and for none other, taken and imprisoned him, the said A. O., that then him you deliver, or cause to be delivered, and set at liberty without further delay. Given at , aforesaid, in the county aforesaid, under my seal, this day of , &c.

County of } J. D., esq., one of the justices of our lady the Queen, assigned to  
 ——— keep the peace in and for the county aforesaid, to the keeper of her  
 Majesty's gaol at \_\_\_\_\_, in the said county, greeting :

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(9.) Liberate to discharge one committed for want of sureties for personal appearance at sessions.

Forasmuch as A. O. in the prison of our said lady the Queen, in your custody now being, at the suit of A. I. of \_\_\_\_\_, in the said county [yeoman], for the want of his finding sufficient sureties for his personal appearance at the next general quarter sessions of the peace, to be holden in and for the said county, and for his keeping the peace [or, "being of good behaviour," as the case may be], in the meantime, towards our said lady the Queen and all her liege people, and especially towards the said A. I., hath found before me sufficient sureties, to wit, A. S. of \_\_\_\_\_, [yeoman], and B. S. of \_\_\_\_\_, [yeoman], either of which hath undertaken for the said A. O. under the pain of [20l.], and he, the said A. O. hath undertaken for himself, under the pain of [40l.], that he, the said A. O. shall and will personally appear at the next general quarter sessions of the peace to be holden in and for the said county, and shall well and truly keep the peace [or, "be of good behaviour," as the case may be], in the meantime, towards our said lady the Queen and all her liege people, and especially towards the said A. I.; therefore, on the behalf of our said lady the Queen, I do command you, that if the said A. O. do remain in the said gaol, for the said cause, and, for none other, then you forbear to grieve or detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will fall thereon. Given under my seal, at \_\_\_\_\_, in the said county, the \_\_\_\_\_ day of \_\_\_\_\_, &c.

At the quarter [or, "general quarter"] sessions of the peace of our lady the Queen, holden at [the New Sessions House, on Clerkenwell Green], in and for the county of [Middlesex], [by adjournment], on [Monday], the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of our sovereign lady Queen Victoria, before W. M., J. P., W. D., E. F., esqs., and others their fellows, justices of our said lady the Queen, assigned to keep the peace of our said lady the Queen in and for the said county of [Middlesex], and also to hear and determine divers felonies, trespasses, and other misdeeds, committed in the same county.

(10.) Articles of the peace exhibited at sessions.

[Middlesex.] Articles of the peace exhibited by W. P., of \_\_\_\_\_, in the parish of \_\_\_\_\_, in the said county of [Middlesex], [cabinet-maker], on behalf of himself and Hannah, his wife (she, the said Hannah, being now confined through sickness in this exhibitant's dwelling-house, situate as aforesaid); against J. M., late of \_\_\_\_\_, in the said county [shoemaker], in order to preserve the lives and persons of himself, this exhibitant, and the said Hannah, his wife, from bodily harm.

[Here state the subject-matter of the complaint and causes of fear, which may be as in form *infra*, *mutatis mutandis*.]

This exhibitant, on his oath, saith that the said H. P., this exhibitant's said wife, is now so sick and weak that she cannot be removed from her home to attend this honourable court, to join in the exhibition of this complaint, and that he, this exhibitant, by means of the premises aforesaid, conceives himself and his said wife to be in great bodily danger. And he further saith that he doth not make this complaint against the said J. M. through any hatred, malice, or ill-will, which he hath or beareth towards the said J. M., but merely for the preservation as well of the life of his said wife as of his own, and also of their persons from bodily harm.

Sworn at the [New Sessions House, on  
 Clerkenwell Green], this  
 day of \_\_\_\_\_, 18 \_\_\_\_\_.

W. P.

By the Court.

Of \_\_\_\_\_ Term, in the \_\_\_\_\_ year of the reign of Queen Victoria.  
 [England.] Articles of the Peace exhibited by C. B., wife of A. B., of \_\_\_\_\_, [gentleman], against the said A. B., her husband, through fear of death, or of receiving some great bodily harm.

(11.) Articles of the peace exhibited by a wife against her husband, in the Queen's Bench.

[Here state the causes producing the fear; and the mode of stating them may be collected from the following matters:]

## 3. Forms.

First. *This exhibitant, on her oath, saith, that she hath been married to the said A. B. for the space of [six years and upwards]; and that, for the space of [one year and ten months] before the [1st day of November] last past, the said A. B. hath treated this exhibitant with great cruelty and barbarity, and without any provocation whatever from this exhibitant; and, in particular, hath frequently, during the time last aforesaid, struck and threatened to strike this exhibitant, and dragged her about his [dwelling-house].*

Secondly. *This exhibitant, on her oath, saith, that the said A. B., having made a voyage to the [East Indies], returned on or about the [29th day of September, A. D. 1826]; and soon after his return, commenced or renewed an acquaintance with a woman who was known by the name of E., with whom, as well as with other women, the said A. B. frequently cohabited, as this exhibitant hath great reason to believe; this exhibitant having known the said woman called by the name of E. shut into the said A. B.'s [bed-room], where she hath remained with him several hours. And this exhibitant saith, that the said A. B. compelled this exhibitant to reside in mean lodgings, different from his place of residence; and that, whenever this exhibitant ventured to go to the said A. B.'s [chambers] to expostulate with him on his ill-treatment, he hath beaten or threatened to beat this exhibitant; and this exhibitant saith that, at one time in particular, during the time last aforesaid, the said A. B. did, with a violent blow, knock this exhibitant down in the said [chambers], and that this exhibitant, in consequence of the said blow, lay senseless for a considerable time.*

Thirdly. *This exhibitant, on her oath, saith that, by means of the cruel treatment of the said A. B. before set forth, and particularly of his having, at divers times within the space of [three months] last past, as this exhibitant hath been informed and believes, threatened to seize, confine, beat, maim, or ill-treat this exhibitant, she, this exhibitant, is put into the utmost fear and danger, and verily believes that the said A. B. will put his said threats into execution, and will do this exhibitant some bodily hurt; and therefore this exhibitant is prevented from going out about her lawful occasions, until she can obtain that protection from the laws of this country which this honourable court has authority to grant. And this exhibitant further saith, that she is now under great fear and apprehension that the said A. B. will take the first opportunity of doing this exhibitant some bodily hurt, unless he is restrained therefrom by this honourable court; and therefore this exhibitant most humbly craves that the said A. B. may be ordered by this honourable court to find sufficient sureties for keeping the Queen's peace towards this exhibitant.*

Lastly. *This exhibitant saith, that she doth not make this complaint against the said A. B. through any hatred, malice, or ill-will which she hath or beareth towards him, but merely for the preservation of her life, and also of her person from bodily harm.*

The above-named C. B. was sworn to the truth  
of the above premises on the day  
of , A. D. 1845,

C. B.

By the Court.

## Surveys.

AS to the proof of public or private surveys, see "*Evidence.*"

4 &amp; 5 Vict. c. 30.

The 4 & 5 Vict. c. 30, "An Act to authorise and facilitate the completion of a survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man," and continued in force until 31st December, 1867, by 29 & 30 Vict. c. 102, and again continued by 30 & 31 Vict. c. 143, until 31st December, 1869, and end of the then next session, was amended by 19 & 20 Vict. c. 61, whereby all the powers, authorities, acts, matters, and things which under or by virtue of the said 4 & 5 Vict. c. 30, are or were vested in or are or were or may be or might have been exercised or done by the master-general and board of her Majesty's ordnance, or by the principal officers of her Majesty's ordnance, or by any of them respectively, shall and may henceforth be vested in and be exercised and done by her Majesty's principal secretary of state for the war department for the time being, recites that "several counties in that part

of the United Kingdom called England have been surveyed by officers appointed by the master-general and board of ordnance, and it is expedient that general surveys and maps of England, Scotland, Berwick upon Tweed, and of the Isle of Man, should be made and completed by officers in like manner appointed; and that the boundaries of the several counties in England and Scotland, and of Berwick upon Tweed and of the Isle of Man, should be ascertained and marked out:" and enacts, That from and after the passing of this act, for the purpose of enabling the principal secretary of state for the war department to make and complete such surveys and maps of England, Scotland, Berwick upon Tweed, and the Isle of Man in manner aforesaid, it shall and may be lawful for the justices assembled at any quarter sessions, or adjournment thereof, held in and for any county, riding, or division in England, Scotland, Berwick upon Tweed, and the Isle of Man, upon the application in writing of any officer appointed by the [principal secretary of state for the war department] for the purposes of this act, such application to be transmitted to the clerk of the peace fourteen days at the least before the holding of the court at which such application shall be considered, who shall cause notice of such application to be inserted in the newspapers in which county advertisements are commonly inserted seven days at the least before the holding of such court, to nominate and appoint one or more fit and proper person or persons to aid and assist, when required, any officer appointed as aforesaid in examining, ascertaining, and marking out the reputed boundaries of each county, city, borough, town, parish, burghs royal, parliamentary burghs, burghs of regality and barony, extra-parochial and other places, districts, and divisions, in England, Scotland, Berwick upon Tweed, and the Isle of Man; and such person shall from time to time act under and obey such directions as he shall receive from the officer or other person appointed by the [principal secretary of state for the war department], to make such surveys and maps as aforesaid: Provided always, that if any person shall produce any false, forged, untrue, or fabricated appointment, every such person shall forfeit and pay the sum of 50*l*.

Sect. 2. That for the execution of the purposes of this act it shall and may be lawful for any person appointed by the justices as aforesaid, and for any other person acting in aid and under the orders of such person, and for any officer or person appointed by or acting under the orders of the [principal secretary of state for the war department], and they are hereby respectively authorised and empowered, from time to time, after notice in writing of the intention of entering shall have been given to the owner or occupier, as the case may be, to enter into and upon any estate or property of any county, or of any body politic or corporate, ecclesiastical or civil, or into and upon any land, ground, or heritages of any person or persons whomsoever, for the purpose of making and carrying on any survey authorised by this act, or by the order of the [principal secretary of state for the war department], and for the purpose of fixing any mark or object to be used in the survey, or any post, stone, or boundary mark whatsoever, and to fix and place any such object, post, stone, or boundary mark in any such estate or property, land or ground, or heritages, and to dig up any ground, for the purpose of fixing any such object, post, stone, or boundary mark, for such object or purpose, and also to enter upon any estates or property, lands, grounds, or heritages, through which any such person appointed by the justices as aforesaid, and any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], shall deem it necessary and proper to carry any boundary line for the purposes of this act at any reasonable time in the day, until the surveying, ascertaining, and marking out of any reputed boundary line shall be completed according to the directions of this act: Provided always, that in every case in

4 & 5 Vict.  
c. 30.

Justices at quarter sessions to appoint persons to assist in ascertaining the boundaries of counties, cities, boroughs, &c.

Persons producing fabricated appointments to forfeit 50*l*.

Surveyor, &c. empowered to enter lands to fix boundaries.

Where it is ne-

4 & 5 Vict.  
c. 30.

cessary to fix any mark in any garden, &c. the occupier may employ a person to fix it.

Satisfaction to be made for damages.

Appeal to quarter sessions.

Clerk of the peace of each county shall deliver to surveyor a list of all the cities, towns, boroughs, parishes, &c. within the county on penalty of 10*l*.

which it shall be necessary to any person appointed by the justices as aforesaid, for any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], or his or their assistant or assistants, to fix any such object, post, stone, or boundary mark within any walled garden, orchard or pleasure ground, such person appointed by the justices aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], or his or their assistant or assistants, shall give three days' notice to the occupier of such garden, orchard, or pleasure ground, of his intention so to do, and it shall be lawful for such occupier to employ any person whom he may think fit to fix such object, post, stone, or boundary mark within such garden, orchard, or pleasure ground, at such time, in such place or places, and in such manner as such person appointed by the justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department]; or his or their assistant or assistants, shall direct: Provided also, that such person appointed by the justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], or his or their assistant or assistants, and workmen, shall do as little damage as may be in the execution of the several powers to them granted by this act, and shall make satisfaction to the owners or occupiers (as the case may require) of such lands, grounds, and heritages, or owners of trees, (as the case may require,) which shall be any way hurt, damaged, or injured, for all damages to be by them sustained in or by the execution of all or any powers of this act, in case the same shall be demanded: Provided always, that in case of dispute between the said person appointed by the justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], on the one hand, and the owner or occupier (as the case may be), on the other hand, as to the amount of damage sustained, the same shall be ascertained and determined by any two or more justices in petty sessions assembled of the county in which the lands, grounds, heritages, or trees may be situate: Provided always, that any owner or occupier as aforesaid, who shall think himself aggrieved by the decision of the justices, may appeal against such decision to the justices of the said county in quarter sessions assembled, who shall hear and determine such appeal, and shall increase or diminish the amount of damages awarded by the justices in petty sessions, and shall award costs for or against the appellant, as the justice of the case shall seem to them to require: Provided always, that such appeal shall be prosecuted at such quarter sessions as shall be holden not less than twenty-one days nor more than four calendar months after the decision of the justices in petty sessions: Provided further, that any person so appealing shall give notice to the clerk of the said justices in petty sessions, within seven days of their decision, of his intention to appeal against their decision, and shall enter into sufficient recognizance to prosecute such appeal.

Sect. 3. enacts that sheriffs in Scotland are to settle the amount of compensation.

Sect. 4. That the clerk of the peace of each and every county shall, within twenty-one days after he shall be thereunto required in writing by any person appointed by the justices as aforesaid, or by any officer or other person appointed by and acting under the [principal secretary of state for the war department] prepare and deliver to such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], a list containing the names and descriptions of the several hundreds, cities, boroughs, burghs,

towns, parishes, or other places within such county; and each such clerk of the peace shall be paid by the said board adequate remuneration for his trouble, and for any expenses incurred by him in pursuance of such requisition; and if any clerk of the peace shall refuse or neglect, or omit to make or deliver such list, in compliance with the request of such surveyor, every such clerk of the peace so offending shall forfeit a sum not exceeding 10*l.* and not less than 2*l.*, in the discretion of the justice or other judge, officer, or court before whom such offender shall be convicted.

4 & 5 Vict.  
c. 30.

Sect. 5. That for the purpose of surveying, ascertaining, and marking out the reputed boundaries of any such county, it shall be lawful for any such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department] within such county, and such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department] is hereby authorised and empowered, by notice in writing signed with his name, and directed and delivered to any such clerk of the peace, to require the attendance of any and every such clerk of the peace in or for any and every such county, or in or for any adjoining county, either in the same or any adjoining county, at such time (not being less than twenty-one days after the date of such notice) and at such place as shall be specified in such notice, and to produce to such person appointed by such justices as aforesaid, or such officer or other person appointed by and acting under the [principal secretary of state for the war department], any books, maps, papers or other documents, in his custody or possession as such clerk of the peace, which such person may require for the purpose of carrying this act into execution, at which time and place every such clerk of the peace shall and he is hereby required to attend upon such person accordingly, and to aid and assist such person appointed by such justices as aforesaid, or any officer of other person appointed by and acting under the orders of the [principal secretary of state for the war department], in the execution of this act; and in case it shall happen that there shall not be any clerk of the peace for any such county or adjoining county, or being such any such officer shall omit or neglect to attend at the time and place mentioned in any such notice, then and in such case it shall be lawful for any such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], by like notice, to require any two or more inhabitants of any such county to attend in the place and stead of such clerk of the peace; and every such inhabitant to whom any such notice shall be directed and delivered shall and he and they is and are hereby required to attend upon such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], accordingly, and to assist such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], in the execution of the purposes of this act: Provided always, that no clerk of the peace shall be obliged to attend, as herein directed at such time or at such place or in such manner as shall interfere with the proper discharge of his ordinary duties as clerk of the peace, nor shall he be called upon to produce any books, maps, papers, or other documents the production of which can in any way injuriously affect the interests of each such county.

Clerk of the peace shall attend surveyor on twenty days' notice of defining the boundaries of counties, &c.

On failure of clerk of the peace attending, two inhabitants may be required to attend.

Sect. 6. That it shall be lawful for any such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the

Boundaries of the counties to be ascertained, &c., and marked out



4 & 5 Vict.  
c. 30.

by posts, stones,  
&c.

war department], at the time mentioned in any such notice, accompanied by the clerk of the peace for the county, the reputed boundaries of which are to be defined and marked out, and by the clerk of the peace of any county adjoining thereto, or by such inhabitants as aforesaid, and such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], clerk of the peace, and other persons, is and are hereby authorised and required to perambulate the boundaries of such county, for the purpose of surveying, ascertaining, and marking the same, according to the best of their power and information; and for that purpose it shall be lawful for such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], clerk of the peace, and other persons, to call on any inhabitant of any such counties to assist them in so doing; and when it shall appear to such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the [principal secretary of state for the war department], that the reputed boundaries of any such county are sufficiently ascertained, such boundaries shall be marked out by such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], in such manner as may be necessary, by the putting down of any posts, blocks, or bolts of wood, metal, or stone, or by the affixing of any marks on or against any church, chapel, bridge, house, or other public or private building or post, and with such distinguishing letters or figures as such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], shall think fit and proper for the occasion.

Penalty on removing or defacing boundary stones, &c.

Sect. 7. That if any person not duly authorised shall take away, remove, or displace, or alter the situation of any boundary stone, post, block, bolt, or mark which shall be set up and placed for the purposes of this act, or shall wilfully deface, mutilate, break, or destroy any such boundary stone, post, block, bolt, or mark, every person so offending shall forfeit and pay a sum not exceeding 10*l*. and not less than 2*l*. in the discretion of the justice, or other judge, officer, or court before whom such offender shall be convicted.

Penalty on obstructing survey, &c.

Sect. 8. That if any person shall wilfully obstruct or hinder any person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], in the execution of his duty in or about the ascertaining and marking out of the boundaries of any county under the provisions of this act, or shall in any way resist such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department] in the performance of his duty under this act, or shall obstruct, hinder, assault, or resist any clerk of the peace, or any workman or other person acting in aid of any such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], in the execution of this act, every person so offending shall forfeit and pay a sum not exceeding 10*l*. and not less than 2*l*., in the discretion of the justice or other judge or officer before whom such offender shall be convicted.

Sect. 9 provides for payment by government of an allowance to parties, &c. attending to point out boundaries.

Sect. 10 provides that the amount of damage sustained by the

occupiers of grounds, lands, &c., shall be made good by payments to be made by government.

4 & 5 Vict.  
c. 30.

Sect. 11. That if any clerk of the peace, or other person, who shall be summoned or required in manner hereinbefore directed, by any person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], to attend such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], in the execution of this act, shall refuse or neglect or omit to attend such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], or shall refuse or neglect or omit to inform and point out, to the best of his knowledge, to such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the [principal secretary of state for the war department], the boundaries of any county, or shall wilfully make any false statement or mis-statement with respect to any such boundaries, or shall wilfully refuse or neglect or omit to give any information in the power of such clerk of the peace or other person to give or afford with respect to any such boundaries, every such clerk of the peace or other person so offending shall forfeit and pay a sum not exceeding 10*l*. and not less than 2*l*., in the discretion of the justices, or other judge, officer, or court before whom such offender shall be convicted.

Penalties on parties, &c. not attending, or not pointing out boundaries.

Sect. 12. That this present act, or any clause, matter, or thing herein contained, shall not extend, or be deemed or be construed to extend, to ascertain, define, alter, enlarge, increase or decrease, nor in any way to affect, any boundary or boundaries of any county, city, borough, town, parish, burghs royal, parliamentary burghs, burghs of regality and barony, extra-parochial and other places, districts, and divisions, by whatsoever denomination the same shall be respectively known or called, nor the boundary or boundaries of any land or property, with relation to any owner or owners, or claimant or claimants of any such land respectively, nor to affect the title of any such owner or owners, or claimant or claimants respectively, in or to or with respect to any such lands or property, but that all right and title of any owner or claimant of any land or property whatever within any hundred, parish, or other division or place whatever, shall remain to all intents and purposes in like state and condition as if this act had not been passed; any description of any such land, with reference to any such hundred, parish, or other division or place whatever, or otherwise, or anything in this act contained, or any law, custom, or usage, to the contrary in anywise notwithstanding.

Act not to affect any boundaries or rights of property.

Sect. 13. That all penalties and forfeitures inflicted or imposed by this act shall and may be recovered in a summary way by the order and adjudication of any two justices of the peace for the county or place, or of the sheriff or court of deemsters, in which such penalty shall be incurred, on complaint to them for that purpose exhibited, and shall afterwards be levied, as well as the costs of such proceedings, in case of nonpayment, by distress, poinding, or other legal process, and sale of the goods and chattels of the offender or offenders, or person or persons liable to pay the same, by warrant under the hand and seal of such justices and of such sheriff, or hand and seal of the court of deemsters, or other legal proceeds, and such justices, sheriff, and court respectively are hereby authorised and required to summon before them any witness or witnesses, and to examine such witness or witnesses upon oath (or affirmation), of and concerning all offences, penalties and forfeitures under this act, and to hear and

Recovery of penalties before two justices of the peace, sheriff, deemsters, &c.

4 & 5 Vict,  
c. 30.

determine the same; and the overplus (if any) of the money so levied or recovered, after discharging the fine, penalty, or forfeiture for which such warrant or other legal process shall be issued, and the costs and expences of recovering and levying the same, shall be returned, upon demand, to the owner or owners of the goods or chattels so seized or distrained; and in case such penalties or forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such justices, sheriff, or court respectively to order the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such warrant of distress or poinding, or other legal process, unless the offender or offenders shall give sufficient security, to the satisfaction of such justices, sheriff, or deemsters, for his or their appearance before such justices, sheriff, or other proper officers, on such day or days as shall be appointed for the return of such warrant of distress or poinding, or other legal process, such day or days not being more than seven days from the time of taking any such security, and which security the said justices, sheriff, or deemsters respectively are hereby empowered to take by way of recognizance, caution, or otherwise; but if upon return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for such justice, or any two justices of the peace for such county or place as aforesaid, or for such sheriff or deemsters, and they are hereby authorised and required, by warrant under their hand and seal, or under the hand of such sheriff, or other legal process, to cause such offender or offenders to be committed to the gaol of such county or place, there to remain, without bail or mainprize, for any term not exceeding two calendar months, unless such penalties or forfeitures respectively, and all reasonable charges shall be sooner paid and satisfied; and such penalties and forfeitures, when so levied, shall be paid and applied to the use of any infirmary or charitable institution in the said county in which such offence shall be committed, in such manner as such justices, sheriff, or deemsters respectively shall direct and appoint.

Application.

Plea of general  
issue.

Sect. 14. That if any person shall be sued or prosecuted for any thing done or executed in pursuance of this act, or of any clause, matter, or thing herein contained, such person may plead the general issue, and give the special matter in evidence, for his defence.

Interpretation  
clause.

Sect. 15. That in construing this act the word "county" shall be taken to include hundred, city, borough, town, parish, burghs royal, parliamentary burghs, burghs of regality and barony, extra-parochial and other places, districts, and divisions, by whatsoever denomination the same respectively shall be known or called; and that the words "clerk of the peace" shall be taken to include any person executing the duties of clerk of the peace, sheriff clerk, sheriff clerk depute, and steward clerk depute, churchwarden, parochial or any public officer, of any county, ward, parish, hundred, wapentake, division, or districts in England, Scotland, or Berwick-upon-Tweed, and setting quest and moars of any parish and the great inquest of every sheading in the Isle of Man; and that every word importing the singular number shall, when necessary to give full effect to the enactments herein contained, be deemed to extend and be applied to several persons or things as well as one person or thing; and that every word importing the masculine gender, shall, when necessary, extend and be applied to a female as well as a male.

Sect. 16 enacts, that in Scotland the sheriff clerk shall, instead of the clerk of the peace, perform the duties imposed upon the clerk of the peace in reference to England.

Sect. 17 enacts, that in Scotland the sheriff and magistrates of burghs in Scotland, shall appoint persons to attend the surveyor.

## Swearing.

AS to oaths, see *ante*, "*Oaths*."

As to blasphemy, see "*Blasphemy*."

By the canons of the church, if any offend their brethren by swearing, the churchwardens shall present them; and such notorious offenders shall not be admitted to the holy communion, till they be reformed. (*Can.* 109.)

Punishment for  
in spiritual court.

By 19 Geo. 2, c. 21, s. 1, if any person or persons shall profanely curse or swear, and be thereof convicted on the oath of any one or more witness or witnesses, before any one justice of the peace for any county, city, riding, division, or liberty, or before the mayor, justice, bailiff, or other chief magistrate of any city or town corporate, or by the confession of the party offending, every person or persons so offending shall forfeit and lose the respective sums hereinafter mentioned; (that is to say)—

19 Geo. 2, c. 21.  
Penalty for pro-  
fane cursing and  
swearing.

Every day labourer, common soldier, common sailor, and common seaman, 1s.

And every other person under the degree of a gentleman, 2s.

And every person of or above the degree of a gentleman, 5s.

And in case any such person or persons shall, after conviction, offend a second time, every such person shall forfeit and lose double; and, for every other offence after a second conviction, treble the sum first forfeited by any offender, for profane cursing and swearing as aforesaid.

Sect. 2. In case any person or persons shall profanely swear or curse, in the presence and hearing of any justice of the peace for any county, riding, division, or liberty, or in the presence or hearing of any mayor, justice, bailiff, or other chief magistrate of any town corporate, every such justice, mayor, or other chief magistrate as aforesaid, shall and is hereby authorised and required to convict every such offender of such offence (in the form and manner hereinafter set forth) without any other proof whatsoever.

Profane swearers  
in hearing of a  
justice, &c. to be  
convicted without  
other proof.

Sect. 3. In case any person or persons shall profanely swear or curse, in the presence and hearing of any constable, petty constable, tithingman, or other peace-officer, it shall and may be lawful for any and every such constable, petty constable, tithingman, or other peace-officer, and they and each of them are hereby authorised and required (in case any such person shall be unknown to such constable, petty constable, tithingman, or other peace-officer) to seize, secure, and detain such offender or offenders, unknown to him or them as aforesaid; and such offender or offenders forthwith to carry before the next justice of the peace for the county, riding, division, or liberty, or before the mayor, justice, bailiff, or other chief magistrate of the town corporate, wherein such offence was committed; and the said justice, mayor, or other chief magistrate, is hereby authorised and required on the oath of such constable, petty constable, tithingman, or other peace-officer, to convict the offender in manner and form hereinafter directed: and in case any such person so profanely swearing or cursing, in the presence or hearing of any such constable, petty constable, tithingman, or other peace-officer, shall be known to any of them, every such constable, petty constable, tithingman, or other peace-officer, shall and is hereby required speedily to make information before some justice of the peace for the county, riding, division, or liberty, mayor, justice, bailiff, or chief magistrate, of any town corporate as aforesaid, in order that the offender or offenders may be by such justice, mayor, bailiff, or other chief magistrate, convicted thereof and punished for the same, in manner and form as in and by this act is directed.

Constables, &c. to  
seize persons  
profanely swear-  
ing, if unknown,

and if they are  
known, inform-  
ation to be made.

19 Geo. 2, c. 21.

Justices, &c.  
to order offender  
to appear, &c.

Penalty to be  
paid or security  
given, or offender  
to be committed  
for ten days to  
house of correc-  
tion.

Common soldiers  
&c. not paying  
penalty, &c.

Set in stocks.

Justices, not  
doing their duty,  
forfeit 5*l*.

Constables not  
doing their duty,  
forfeit 40*s*.

Commitment for.

Form of con-  
viction,

Sect. 4. Every such justice of the peace, mayor, or other chief magistrate as aforesaid, shall immediately, upon information given upon oath of any such constable, petty constable, tithingman, or other peace-officer, or of any other person whatsoever, cause the offender or offenders to appear before him; and upon such information being proved as aforesaid, convict such offender or offenders in such manner as in and by this act is prescribed: and in case such offender or offenders shall not immediately pay down the respective sum so forfeited, or give security to the satisfaction of such justice, mayor, or other chief magistrate, before whom such conviction is made, it shall and may be lawful for such justice, mayor, or other chief magistrate, to commit the offender to the house of correction for the county, riding, division, liberty, city, or town corporate where such offence shall be committed, there to remain and be kept to hard labour for the space of ten days.

Sect. 5. In case any common soldier belonging to any regiment in his Majesty's service, or any common sailor or common seaman belonging to any ship or vessel, shall be convicted of profane cursing or swearing as aforesaid, and shall not immediately pay down the penalty by him forfeited, or give security for the same as aforesaid, and also the cost of the information, summons, and conviction, as in and by this act is directed; every such common soldier, common sailor, or common seaman, instead of being committed to the house of correction, as by this act is directed, shall by the said justice, mayor, bailiff, or other head officer, be ordered to be publicly set in the stocks for the space of one hour, for every single offence; and for any number of offences, whereof he shall be convicted at one and the same time, two hours.

Sect. 6. If any justice of the peace of any county, riding, division, or liberty, mayor, justice, bailiff, or other chief magistrate of any town corporate, shall wilfully and wittingly omit the performance of his duty, in the execution of this act, he shall forfeit and lose the sum of 5*l*.; one moiety thereof to the use of the informer, and the other moiety thereof to the use of the poor of the parish wherein such justice, mayor, or other chief magistrate shall reside; to be recovered by action, suit, bill, or plaint, in any of his Majesty's courts of record at Westminster; wherein no essoin, protection, or wager of law shall be allowed, or more than one imparlance.

Sect. 7. If any constable, petty constable, tithingman, or other peace-officer, shall wilfully and wittingly omit the performance of his duty in the execution of this act, and be thereof convicted by the oath of one witness, before any justice of the peace for any county, riding, division, or liberty, or before the mayor, justice, bailiff, or other chief magistrate of any town corporate, every such constable, petty constable, tithingman, or other peace-officer so offending, shall forfeit and lose the sum of 40*s*., to be levied and recovered by distress and sale of the offender's goods and chattels, by virtue of a warrant under the hand and seal of such justice, mayor, or other chief magistrate, and to be disposed of, one moiety thereof to the use of the informer, and the other moiety to the use of the poor of the parish where such offence shall be committed; and in case such offender shall not have sufficient goods and chattels whereon to levy the said penalty, it shall and may be lawful for such justice, mayor, or other magistrate, to commit such offender to the house of correction for the county, riding, division, liberty, city, or place, there to remain and be kept to hard labour for the space of one month.

Sect. 8. All and every justice of the peace for any county, riding, division, or liberty, and all and every mayor, justice, bailiff, or other chief magistrate of any town corporate, before whom any person or persons shall be convicted of profane swearing or cursing, shall cause the conviction to be drawn up in the words and form following:—

*Middlesex* } Be it remembered, that on the      day of      , in the      year of her Majesty's reign, A. B. was convicted before me,      , one of her Majesty's justices of the peace for the county, riding, division, or liberty aforesaid [or, "before me,      , mayor," "justice," "bailiff," or "other chief magistrate of the city or town of      within the county of      ," as the case shall be], of swearing one or more profane oath or oaths [or, "of cursing one or more profane curse or curses," as the case shall be]. Given under my hand and seal, the day and year aforesaid. 19 Geo. 2, c. 21.

Which said form and conviction shall not be liable to be removed by certiorari into his Majesty's court of King's Bench, but shall be deemed and taken to be final to all intents and purposes whatsoever; and the said justice, mayor, bailiff, or other chief magistrate before whom such conviction shall be made, shall cause the same to be fairly wrote over upon parchment, and returned to the next general or quarter sessions of the peace for the county wherein such conviction was made, to be filed by the clerk of the peace, and remain and be kept amongst the records of the said county. to be wrote on parchment, and returned to next sessions.

Under this statute it has been decided that a conviction is good, for the offence of cursing one profane curse, twenty several times repeated, and which adjudges the offender for his offence to forfeit and pay the sum of 2*l*.

Objection was made that this conviction included several offences, imposing the forfeit of 2*s*. on each. But the court, referring to the form in sect. 8, held "that the statute evidently contemplates the case of swearing more than one oath, and of being convicted of such swearing in one conviction." The form given in the statute shews that the legislature contemplated that a person cursing or swearing one or more profane curses or oaths might be adjudged to forfeit a cumulative penalty in one conviction, and the profane cursing or swearing being the offence prohibited as often as the person repeats the oath or curse consecutively he forfeits the sum specified. (*Reg. v. Scott, Q. B. 33 L. J. M. C.*, p. 15.)

Sect. 9. All and every justice of the peace for any county, riding, division, or liberty, and every mayor, justice, bailiff, or other chief magistrate of any city or town corporate may, and they are hereby authorised and required to put this act in execution against any person or persons within their several jurisdictions, although such justice, mayor, bailiff, or other chief magistrate shall be rated and pay to the relief of the poor of any parish, town or place, where any offence contrary to the true intent and meaning of this act shall be committed; any law or statute to the contrary in anywise notwithstanding. Justices, &c. to put act in execution indiscriminately.

Sect. 10. All and every penalty or penalties inflicted by this act, upon any person or persons, for profane cursing and swearing, shall be disposed of or for the benefit of the poor of the parish wherein such offence was committed; and that all charges of the information and conviction of any such offender shall be borne and paid by the party offending, if able, over and above the penalties inflicted by this act, which charges shall be settled and ascertained by the justice of peace, mayor, bailiff, or other chief magistrate before whom such conviction shall be made: and in case such party shall not be able, or shall not immediately pay the said charges and expenses, or give security for the same to the satisfaction of such justice of the peace, mayor, bailiff, or other chief magistrate before whom such information and conviction shall be made, to commit such offender to the house of correction as aforesaid, there to remain and be kept to hard labour for the space of six days, over and above such time for which such offender may be committed in default of payment of the penalties inflicted by this act; and in such case no charges of information and conviction shall be paid by any person whatsoever. Penalties, how to be disposed of. Offenders to pay all charges over and above penalties, or be committed to house of correction for six days extraordinary.

Sect. 11. If any action or suit shall be commenced or brought against any justice of the peace, constable, or other officer or person whatso-

19 Geo. 2, c. 21.

General issue.

Treble costs.

Proof, &amp;c., to be made within eight days.

Fee of 1s to justice's, &amp;c., clerk.

ever, for doing or causing to be done any thing in pursuance of this act concerning the said offences, the defendant in that action may plead the general issue, and give the special matter in evidence; and if upon such action verdict be given for the defendant, or the plaintiff become nonsuit, or discontinue his action, then the defendant shall have treble costs. (See as to treble costs the 5 & 6 Vict. c. 97, *title*, "*Justices*.")

Sect. 12. No person shall be prosecuted or troubled for any offence against this statute hereinbefore or hereinafter mentioned, unless the same be proved or prosecuted within eight days next after the offence committed.

Sect. 13 is repealed by 4 Geo. 4, c. 31.

Sect. 14. The clerk of the justice, mayor, bailiff, or other chief officer before whom proceedings upon this act shall be had, shall and may receive and take for the information, summons, and conviction of every offender against this act, the sum of 1s., and no more.

Sect. 15 repeals 21 Jac. 1, c. 20 and 6 and 7 Will. 3, c. 11.

### Forms.

(1.) Information for swearing.

County of } The information of A. I. of \_\_\_\_\_, in the county aforesaid, [yeoman], made on oath, on, &c., at, &c., before me, J. P., esq., one of her Majesty's justices of the peace in and for the said county; who saith,

That on, &c., now last past, at, &c., he heard A. O., of \_\_\_\_\_, in the said county [labourer], swear one profane oath [or, "curse one profane curse"], in these words, to wit, &c.

(2.) Summons thereon.

County of } To E. F., the Constable of \_\_\_\_\_, and all others whom this may concern.

Whereas information hath this day been made before me, J. P., esq., one of her Majesty's justices of the peace for the said county, upon the oath of A. I., of \_\_\_\_\_, [yeoman], that, on \_\_\_\_\_, the \_\_\_\_\_ day of this present month of \_\_\_\_\_, he heard A. O., of \_\_\_\_\_, in the said county [labourer], at \_\_\_\_\_, in the parish of \_\_\_\_\_, in the said county, swear one profane oath [or, "curse one profane curse"]; these are, therefore, to command you to cause the said A. O. forthwith to appear before me, to answer the premises, and to be further dealt with according to law. Given under my hand and seal, at \_\_\_\_\_, in the said county, the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of \_\_\_\_\_.

Conviction.

See the form of conviction prescribed by the act, *ante*, p. 777.

(3.) Commitment thereon.

County of } To E. F., the Constable of \_\_\_\_\_, in the said county, and to the keeper of the [house of correction] at \_\_\_\_\_, in the said county, and all others whom this may concern.

Whereas A. O., of \_\_\_\_\_, in the said county [labourer], is and stands convicted this day before me, J. P., one of her Majesty's justices of the peace in and for the said county, of swearing [one profane oath], on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the parish of \_\_\_\_\_, in the said county, whereby he hath forfeited the sum of [one shilling] to the poor of the said parish of \_\_\_\_\_. And whereas the said A. O. hath refused and doth refuse to pay down the said sum of [one shilling] for the use of the poor aforesaid, and also hath refused and doth refuse to give satisfactory security to pay the same; these are, therefore, to require you, the said constable, to convey the said A. O. to the [house of correction], at \_\_\_\_\_ aforesaid, and deliver him to the keeper thereof, together with this warrant. And I do hereby command you, the said keeper, to receive him the said A. O. into your custody in the said [house of correction], and there to detain and keep him to hard labour for the space of [ten days]; and, for so doing, this shall be your sufficient warrant. Given under my hand and seal, at \_\_\_\_\_, in the said county, the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of Queen Victoria.

If he also refuse to pay the charges, these words may be added : "*Satisfactory security for the same. And whereas the said A. O. hath likewise refused and doth refuse to pay the sum of [one shilling], which I have settled and ascertained as and for the charges and proceedings against him touching the premises, and hath refused and doth refuse to give satisfactory security to pay the same ; these are, therefore, to require you, &c., for the space of [sixteen] days,*" &c. 19 Geo. 2, c. 21.

## Taxes, Assessed, &c.

A TAX may be defined to be a certain aid, subsidy, or supply, granted by the Commons in parliament assembled, and confirmed by act of parliament, constituting the Queen's extraordinary revenue, and paid yearly towards the expenses of government. Tax what.

The origin of taxes is stated in 1 *Bla. Com.* 324.

The taxes now levied on the subject are applicable to the purpose of supplying the public expenses, resulting from the support of the navy, the army, the interest of the national debt, and the annual expenses of the government. These taxes, in the accounts annually laid before parliament, under the act 42 Geo. 3, c. 70, are distinguished under the two heads of ordinary revenues and extraordinary resources. The ordinary revenues are either annual or permanent. The permanent ordinary taxes now levied are the customs, excise, stamps, land tax, assessed taxes, postage duties, and other articles of trifling amount, such as licences to hawkers, hackney coaches, pawnbrokers, &c.; a considerable annual revenue is also derived from the Post-office. As one of the extraordinary resources, a tax on income, or the profits of property, has frequently been imposed. It was first introduced under the title of a tax on income, and regulated by the 38 Geo. 3, c. 16; 39 Geo. 3, c. 13; 39 & 40 Geo. 3, c. 49. Afterwards as a contribution on the profits of property, under the 43 Geo. 3, c. 42; 43 Geo. 3, c. 122; 45 Geo. 3, c. 15; 46 Geo. 3, c. 65; 5 & 6 Vict. c. 35, and acts continuing the same. Under some of these acts, it was at first 5 per cent., then increased to 6½, and to 10 per cent. What taxes are now levied.

In the preceding parts of this work, the taxes called duties of *Excise, and Customs, Land-Tax, Stage Coach Duty, Post-Horse Duty, Hawker's Licences, and Stamp Duties*, have already been considered. Under the above head of *Taxes*, the branches of revenue principally denominated *Assessed Taxes* are now considered, together with the provisions relative to the commissioners of the affairs of taxes and their inferior officers, and the regulations affecting the assessment, raising, levying, and paying these taxes, and the acts relating to compositions for taxes.

*Assessed Taxes* now consist of duties on *Servants, Carriages, Horses, Mules, and Dogs, Armorial Bearings, Game Certificates*, and other the duties transferred to the commissioners for the affairs of taxes. Of what duties the assessed taxes consist.

This subject is herein treated under the following heads :

- I. *The Acts consolidating several Boards into Commissioners of Inland Revenue, and regulating the qualifications of Commissioners of Taxes, and the provisions for the management of the Affairs of Taxes, &c., p. 780.*
- II. *The Acts regulating the Assessments and Collection, &c., p. 853.*
- III. *The Assessed Taxes themselves, p. 877.*

Which head will be found divided as follows :—1. The *Regulations* of the 43 Geo. 3, c. 161, and subsequent Acts ; and, 2. The several *Duties*, with the particular Rules and Exemptions affecting them.



1. *The Acts relating to Management of Commissioners.*

I. **The Acts consolidating several Boards into "Commissioners of Inland Revenue," and regulating the qualifications of Commissioners of Taxes, and the provisions for the management of the Affairs of Taxes, &c.**

38 Geo. 3, c. 48; 43 Geo. 3, c. 99; 45 Geo. 3, cc. 5, 48, 71; 48 Geo. 3, c. 55; 50 Geo. 3, c. 105; 3 Geo. 4, c. 88; 7 & 8 Geo. 4, c. 75; 1 & 2 Will. 4, c. 18; 4 & 5 Will. 4, c. 60; 5 & 6 Will. 4, c. 20; 1 Vict. c. 61; 6 & 7 Vict. c. 24; 9 & 10 Vict. c. 56; 12 & 13 Vict. c. 1; 17 & 18 Vict. c. 85; 19 & 20 Vict. c. 80; 24 & 25 Vict. c. 91; 31 & 32 Vict. c. 124.

These matters are arranged under the following heads:

1. *Who are Commissioners of Inland Revenue.*
2. *Qualifications and Powers of Commissioners.*
3. *Meetings of Commissioners—Appointment of Clerks and Assessors, and their Powers and Duties.*
4. *Appointment of Collectors and Sureties, and their Powers and Duties, and Liabilities.*
5. *Inspectors and Surveyors, and their Powers and Duties, and of Receivers-General. Rules and Regulations respecting Receivers-General, Collectors, and other Officers.*
6. *Of Surcharges and Appeals.*
7. *Of distraining for Arrears of Taxes.*
8. *Provisions respecting the Payment of Monies in the Hands of Collectors; and when Parishes are liable for Default, and Proceedings thereupon.*
9. *Provisions for enforcing the Act, Penalties, Protection to Officers, &c.*

1. COMMISSIONERS OF INLAND REVENUE.

The principal consolidating act, 43 Geo. 3, c. 99.

The 43 Geo. 3, c. 99, "An Act for consolidating certain of the Provisions contained in any Act or Acts relating to the Duties under the Management of the Commissioners for the Affairs of Taxes, and for amending the same," reciting, that "it is expedient that certain of the provisions and powers contained in any acts in relation to the duties on windows or lights, on inhabited houses, on servants, carriages, horses, mules, and dogs, and other the duties lately transferred to the commissioners for the affairs of taxes, should be reduced into one act of parliament, and amended in the particulars herein mentioned," enacts, That all the said duties now under the management of the commissioners for the affairs of taxes (except the monies arising from the aid granted to his Majesty by a land-tax, by 38 Geo. 3, c. 8, so far as the same relate to England, Wales, and Berwick-upon-Tweed, shall, from and after the 5th of April, 1804, be assessed, raised, levied, and paid, under the regulations thereof.

All duties now under the management of tax-office (except land-tax) shall be levied under regulations of this act.

The 4 & 5 Will. 4, c. 60, consolidates the boards of commissioners of stamps and taxes. The boards of commissioners of stamps and commissioners of taxes to be one consolidated board of commissioners of stamps and taxes.

The 4 & 5 Will. 4, c. 60, s. 8, enacts, That from and after the passing of this act the several persons so as aforesaid appointed commissioners of stamps for the United Kingdom of Great Britain and Ireland and commissioners for the affairs of taxes in Great Britain respectively shall, without any further commission or other authority than this act, be and become one consolidated board of commissioners, and be called "The Commissioners of Stamps and Taxes," and it shall be lawful for his Majesty, his heirs and successors, from time to time to appoint under the great seal of Great Britain and Ireland such other persons as he or they shall think fit to be commissioners of stamps and taxes, and that from henceforth all the several duties, matters, and things which at the time of the passing

of this act are collected by or are under the care and management of the said commissioners of stamps and of the said commissioners for the affairs of taxes respectively shall respectively be collected by and shall be under the care and management of the commissioners of stamps and taxes, in the same manner as such duties, matters, and things respectively have heretofore been collected by or have been under the care and management of the said commissioners of stamps and of the said commissioners for the affairs of taxes respectively: provided always, that as well the said commissioners so to be appointed by his Majesty, his heirs and successors, as aforesaid, as the said commissioners by this act constituted commissioners of stamps and taxes shall respectively be and remain commissioners of stamps and taxes during the pleasure of his Majesty, his heirs and successors, and no longer.

Sect. 9 enacts, that the powers vested in commissioners of stamps and commissioners of taxes respectively by statute are to be exercised by the commissioners of stamps and taxes.

By 12 & 13 Vict. c. 1, it is enacted from and after the passing of this act that the several persons appointed and now being commissioners of excise and commissioners of stamps and taxes respectively, shall without any further commission or authority than this act, become and be one consolidated board of commissioners, and be called "The Commissioners of Inland Revenue," and from henceforth all the several revenues, duties, matters, and things, which at the time of the passing of this act are collected by, or are under the care and management of the said commissioners of excise and of the said commissioners of stamps and taxes respectively, shall respectively be collected by, and shall be under the care and management of the commissioners of inland revenue constituted by this act, or to be appointed as herein-after directed in the same manner as such revenues, duties, matters, and things respectively have heretofore been collected by or have been under the care and management of the said commissioners of excise and of the said commissioners of stamps and taxes respectively, and all such revenues and duties shall be denominated and be deemed to be inland revenue.

Sect. 2 enacts that her Majesty may appoint commissioners of inland revenue who are to hold their offices during her Majesty's pleasure.

Sect. 3 enacts that the powers and authorities vested in the commissioners of excise, and commissioners of stamps and taxes respectively, shall be exercised by the commissioners of inland revenue.

By 45 Geo. 3, c. 48, s. 3, all persons who shall act as justices of the peace of or for any county, riding, shire, or stewartry in Great Britain, being duly qualified as aforesaid, may act as commissioners for putting into execution the powers, provisions, &c. of the 38 Geo. 3, c. 5 (the Act granting the Land tax), that are made perpetual by 38 Geo. 3, c. 60. This enactment seems to be repeated as to land tax by 7 & 8 Geo. 4, c. 75.

By 7 & 8 Geo. 4 c. 75, s. 1, it is enacted that all persons who shall act as justices of the peace for any county, shire, riding, division, or district within England and Wales, all such justices being respectively duly qualified to act as commissioners of the land tax in manner thereby directed shall be and are thereby declared to be commissioners within their respective counties, shires, ridings, divisions and districts for putting in execution the acts granting land tax 38 Geo. 3, c. 5, and 60, and the acts granting and continuing the duties on personal estates, offices, and pensions in England. By sec. 3, the justices of the peace shall have the same qualifications required by 38 Geo. 3, c. 5, amended in respect of this qualification by 38 Geo. 3, c. 48.

By 38 Geo. 3, c. 48, s. 3, which repeals the qualification of commissioners under c. 5 of the same session, enacts in lieu, sect. 3, That no person shall be capable of acting as commissioner in the execution of the said act, or any of the powers therein contained, in or for any

1. *The Acts relating to Management of Commissioners.*

4 & 5 Will. 4, c. 60.

12 & 13 Vict. c. 1.  
Commissioners of inland revenue.

45 Geo. 3, c. 48.  
Justices of the peace as commissioners for land tax.

7 & 8 Geo. 4, c. 75.  
As commissioners of land and assessed taxes.

38 Geo. 3, c. 48.  
Their qualification.

1. *The Acts relating to Management of Commissioners.*

38 Geo. 3, c. 48.

county at large within England, the dominion of Wales (the counties of Merioneth, Cardigan, Carmarthen, Glamorgan, Montgomery, Pembroke, Radnor, and Monmouth excepted), or in or for any of the ridings of the county of York, unless such person be seised or possessed of land, tenements, or hereditaments of the value of 100*l.* per annum, or more, of his own estate, being freehold, copyhold, or leasehold, over and above all ground rents, incumbrances, and other reservations payable out of or in respect of the same, or unless such person be heir apparent of some person who shall be seised or possessed of a like estate of the value of 300*l.* per annum, one moiety of which said estate required as qualification shall be situate within such respective county or riding for which such person is appointed a commissioner.

2. QUALIFICATIONS AND POWERS OF COMMISSIONERS. (a).

43 Geo. 3, c. 99.  
Commissioners shall be qualified as commissioners of land-tax, under 38 Geo. 3, c. 48.

Qualification in Wales.

Penalty for acting without oath or qualification, 200*l.*

The 43 Geo. 3, c. 99, s. 4, enacts that no person shall act as a commissioner in the execution of any act or acts before mentioned, unless such person shall be duly qualified as required by 38 Geo. 3, c. 48, *ante*, sect. 3 p. 778: provided always, that in respect of the cities, liberties, and places hereinafter mentioned, the commissioners acting within the same for the duties before mentioned shall be qualified as by this act is directed: Provided also, that no qualification shall be required for any commissioner acting for the said duties before mentioned in any other county in Wales than is required for the commissioners acting in the counties of Wales mentioned in the said last-recited act: Provided also, that no person shall presume to act as such commissioner without taking the oaths herein mentioned; and if any person shall, from and after the time appointed for the commencement of the regulations of the said acts, before mentioned, or any of them, presume to act as such commissioner, without having taken the oaths (b) hereby prescribed in the manner required by this act, or without being qualified as before mentioned, he shall forfeit the sum of 200*l.*

Sect. 5 requires commissioners before acting to take oaths of allegiance, &c. See "*Oaths*."

Commissioners before acting, shall take the oath in schedule (A.) (b);

which shall be subscribed, and sent to the tax-office.

Commissioners having taken the oaths, shall administer it to the others.

Sect. 6. That every such commissioner, before he shall execute the office of such commissioner, except in administering the oath hereinafter mentioned to any other of the said commissioners, shall take, and he is hereby required to take, the oath expressed in the schedule (marked A.) to this act annexed, which oath any one of the persons so appointed as commissioners is hereby authorised to administer, although the said person administering the same hath not himself previously taken the said oath, and which oath so taken shall be subscribed by the party taking the same, and the names of all the persons so subscribing shall forthwith be transmitted to the office of the commissioners for the affairs of taxes at Somerset House, in the county of Middlesex, by the clerks of the commissioners respectively, wherever such oath shall be administered: Provided always, that where any one or more of the persons so appointed commissioners acting for any district, shall have qualified himself or themselves to act, by taking the oaths mentioned in this act, and such one or more of them shall be present at any meeting of such commissioners in the same district, then, and in such case, the said oath shall not be administered to any other commissioner in the same district but by a com-

(a) By 43 Geo. 3, c. 161, s. 6, it is enacted, that commissioners of land-tax qualified as under 38 Geo. 3, c. 5, and by s. 8, that commissioners, &c. under 43 Geo. 3, c. 99 & 150, should be commissioners, &c. for executing

the 43 Geo. 3, c. 161.

(b) But now a declaration is substituted for an oath, by 5 & 6 Will. 4, c. 62; see title "*Oath*." See forms, *post*.

missioner or commissioners present at such meeting, who shall have previously taken the said oath.

Sect. 7. That no person shall be capable of acting as such commissioner within the city of London, and liberty of Saint Martin-le-Grand, nor within the city and liberty of Westminster, nor in or for any other parish or place, any part whereof shall be situate within the bills of mortality, or the parishes of Saint Mary-le-Bone, or Saint Pancras, in the county of Middlesex, unless such person shall be possessed of lands, tenements, or personal estate, or of both together, to the amount or value of 5000*l.* at least, after the payment of all his debts, anything herein contained to the contrary notwithstanding; which qualification they shall swear to previous to their acting as aforesaid, according to the form following; that is to say,

*I. A. B., do swear [or affirm, as the case may require], that truly and bonâ fide I have such an estate, consisting of [specifying the same], of the clear value of 5000*l.* over and above what will satisfy and discharge all my debts. So help me God.*

Nor unless he shall be an inhabitant of the district for which he shall act as a commissioner; and if any person shall presume to act as a commissioner in the execution of this act, or any of the powers herein contained, within the city of London and liberty of Saint Martin-le-Grand, or within the city and liberty of Westminster, or in or for any parish or place, any part whereof shall be situate within any other part of the bills of mortality, or in or for the parish of Saint Mary-le-Bone, or Saint Pancras, before he shall have taken such oath as herein is directed, or without being qualified as herein is required, or without being an inhabitant in the same district for which he shall act as a commissioner, he shall forfeit for every such offence the sum of 200*l.*; which oath shall be subscribed by the party taking the same, and their names transmitted to the officer for taxes.

Sect. 8. That in case of any controversy arising between such commissioners, in any matter or thing touching the execution of any act before mentioned, in which any commissioner or commissioners shall be interested in his or their own right, or concerned in the controversy in the right of any person for whom they shall act as steward, agent, attorney, or solicitor, the commissioner or commissioners so interested or concerned shall have no voice, but shall withdraw during the debate of such controversy, until it shall have been determined by the rest of the commissioners, on pain that every commissioner who shall so act in any matter or thing in which he or they is or are interested or concerned as aforesaid shall forfeit and pay the sum of 50*l.*

Sect. 34. That nothing herein contained shall be construed to restrain the said commissioners, or any of them, from acting as commissioners in any part of the county, riding, division, or place, for which they are appointed; and that all warrants and precepts of the said commissioners shall and may be executed by the respective persons to whom the same are directed, in any part of the same county, riding, division, or place, for which they are appointed.

By 45 Geo. 3, c. 5, s. 1, that the said acts shall not be construed to restrain any benchman of any of the inns of court from acting as such commissioner for such inn of court, and the inns belonging thereto, whether of law or equity; nor any of the officers who, by virtue of their offices, have heretofore acted in the execution of the land-tax act, from acting as such commissioner in the liberty of the palaces of Whitehall and Saint James's; and no other qualification shall be required of any such benchman or officer as aforesaid than the possession of such places or offices respectively, and who respectively shall and may act therein, although they shall not be resident within the district for which they shall act.

1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.  
Qualification of commissioners in London, Westminster, &c., 5000*l.*

Oath.

Commissioners must be inhabitants of the district.

Penalty on acting without being qualified, &c., 200*l.*

Commissioners interested shall have no voice in controversies.

Penalty 50*l.*

Commissioner may act for any part of the county for which he is appointed.

Warrants of service may be executed in any part of a county, riding, &c.

45 Geo. 3, c. 5. Benchmen may act as commissioners for the inns of court; and officers acting in the execution of the land-tax may act as commissioners for Whitehall and St. James's.

1. *The Acts relating to Management of Commissioners.*

45 Geo. 3, c. 5.

Persons appointed commissioners for Middlesex, &c., may act as such for St. Clement Danes.

Sect. 2. That persons residing in either of the parishes of Saint Clement Danes, Saint Mary-le-Strand, or Saint John the Baptist, in the liberty of the Savoy, parts thereof being situate in the county of Middlesex, and other parts in the city and liberty of Westminster, being specially named and appointed commissioners for the said county of Middlesex, or for the said city and liberty of Westminster, and being duly qualified as directed by the said first mentioned act, may act as such commissioners for any or all of the divisions or districts within the said parishes, or any of them; anything in the said first mentioned act contained to the contrary notwithstanding.

1 & 2 Will. 4, c. 18.

Two of the Commissioners may indorse remittances by bills, and do any other acts required of commissioners of taxes.

By 1 & 2 Will. 4, c. 18, s. 6, that all bills or securities drawn for or on account of the taxes, rates, and duties aforesaid, or any of them, payable to the order of the commissioners for the affairs of taxes, and remitted either to the said commissioners or to their office, or to the said receiver-general for the London district, shall and may be indorsed by any two of such commissioners; and all other acts, matters, and things whatsoever by this act, or by any act in force relating to the said taxes, rates, and duties, or any of them, which the commissioners for the affairs of taxes are authorised or required to do, execute, or perform, shall and may be done, executed, and performed by any two of such commissioners, any act or acts of parliament, law, usage, or custom to the contrary thereof notwithstanding.

### 3. MEETINGS OF COMMISSIONERS, APPOINTMENT OF CLERKS AND ASSESSORS, AND THEIR POWERS AND DUTIES.

43 Geo. 3, c. 99.

First meeting of commissioners shall be annually, on or before April 10 (a).

Two commissioners sufficient to act.

Election of clerk and assistants;

for one year, removable only for just cause, and at a special meeting.

By 43 Geo. 3, c. 99, s. 9, that such commissioners as shall be duly qualified to act in the execution of the acts before mentioned, in order to the speedy execution thereof, shall, in the respective hundreds, laths, wapentakes, rapes, wards, or other districts, cities, boroughs, cinque-ports, towns, and places, in the several counties, ridings, and divisions, for which they are or shall be appointed to be commissioners, meet together yearly and every year, at the most usual or common place of meeting within such districts, cities, boroughs, cinque-ports, towns, and places respectively, on or before the 10th day of April yearly (a); and any two or more of them shall hold such meeting or any other meeting of commissioners authorised by this act, or the acts before mentioned, and shall be competent to do any act, matter, or thing thereby required to be done by such commissioners; and such commissioners, or so many of them as shall be present at the first meeting to be holden in every year, or the major part of them, having qualified themselves by taking or having taken the oaths in manner herein directed, shall elect one fit and sufficient person to be *their clerk*, and one other fit and sufficient person, if the said commissioners shall deem it necessary, to be his assistant, for all the assessments to be made of the several duties with which the said commissioners shall be charged within their respective limits, for one year, and which person so elected shall, by virtue of such election, be the sole clerk to such commissioners for all the said assessments to be made by them for such year, and which clerk shall not be removable from his said office during the year for which he shall be appointed as aforesaid, except for just cause, and at a meeting of the commissioners for that purpose duly summoned by notice in writing, signed by two or more of such commissioners, and left at the usual place of abode of each and every of the commissioners who shall have qualified as aforesaid, in and for such district, city, borough, cinque-port, town, or place, and by the major part of the commissioners present at such meeting;

and such commissioners shall also, at such their first meeting, direct their several and joint precept or precepts to such inhabitants of each parish, ward, or place, and such number of them as they in their discretion shall think most convenient, to be *presentors and assessors* for such parish, ward, or place, requiring them to appear before the commissioners at such place and at such time, not exceeding ten days after the date of their precepts, as they shall appoint; and at such their appearances the commissioners, or so many of them as shall meet at such their second meeting, shall appoint such of the said inhabitants as they shall think proper to be the *assessors* for such parish or place of the several duties with which the said commissioners shall be charged as aforesaid, for one year; and at the same time shall openly read, or cause to be read unto them, the several duties for which they are to be appointed assessors, and openly declare the effect of their charge unto them, and how and in what manner they ought and should make their certificate and assessments of the said several duties; and shall then and there appoint another day, within the time hereinafter limited, for the said persons to appear before the said commissioners, and bring in their certificates of assessments of the said several duties in writing under their hands, which shall be verified upon their oaths or solemn affirmations, and not otherwise, which said assessors are hereby strictly enjoined and required, with all care and diligence, to charge and assess themselves, and all other persons chargeable with the said duties so given to them in charge, and to make their assessments according to the provisions of the laws then in force, upon pain of forfeiture of any sum not exceeding 20%, nor less than 5%; and at the time and place so as aforesaid prefixed for their appearance, such assessors shall return the names of two or more able and sufficient persons, within the bounds or limits of those parishes or places for which they shall be assessors respectively, to the said commissioners, to be by them appointed collectors of the several duties to be raised and assessed by them as such commissioners.

And see sects. 17 and 32, *post*, pp. 793 and 802.

By 19 & 20 Vict. c. 80, s. 4, it is enacted, that for the more convenient execution of the acts relating respectively to the land tax, the assessed taxes, and the income tax, it shall be lawful for the commissioners acting in the execution of the acts relating to the land tax for any division, at any meeting of such commissioners convened for that purpose, if and as they shall see fit (subject as herein provided), to unite any two or more parishes, townships, tithings, hamlets, or places (extra-parochial or otherwise), for the purpose of the more convenient execution of the said several acts relating to the said taxes respectively, and to certify such union to the commissioners of inland revenue for the approbation of the commissioners of Her Majesty's treasury; and if the said last mentioned commissioners shall approve of such union, such approbation shall be certified by the commissioners of inland revenue to the respective commissioners acting in the execution of the several acts relating to the several taxes aforesaid respectively; and thereupon, and from and after such time as shall be fixed by such last-mentioned certificate, such united parishes, townships, tithings, hamlets, or places shall, for all the purposes of the said several acts and taxes respectively, be considered as one parish or place only, and the said respective commissioners shall execute the said acts with respect to such united parishes, townships, tithings, hamlets, or places, as if the same were one parish or place only: Provided always, that nothing herein contained shall extend to authorize any alteration of the quota of land tax now chargeable by law on any parish or place.

Sect. 10 of 43 Geo. 3, c. 99, that every person to be appointed such assessor shall, before he shall take upon him the execution of the said

1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99. Commissioners shall at the second meeting appoint assessors; see 48 Geo. 3, c. 141, s. 1.

Assessors shall bring in assessments on oath; and shall charge all persons liable —penalty 20% to 5%.

and nominate collectors.

19 & 20 Vict. c. 80.

Commissioners of land tax may unite parishes for purposes of land, assessed, and income taxes.

To be approved by "Treasury."

United parishes to be as one for executing acts as to said taxes.

Assessors shall take oaths, &c.,

1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.  
under 1 W. & M.  
c. 8, or c. 18 (a).

\* See in act.

Commissioners  
may administer  
oaths under this  
act.

Before acting,  
assessors shall  
also take oath in  
schedule (B.).

Penalty 50l.

Assessors shall  
annually deliver  
assessments on or  
before June 5.

Commissioners  
shall sign the  
assessment, and  
three duplicates  
thereof, and de-  
liver one to the  
assessors, with  
warrants for col-  
lecting the same;  
another to the  
surveyor.

Collectors to be  
appointed.

Collectors shall  
demand duties  
within ten days  
after due, and  
give acquittances.

employment, take the oaths mentioned and required to be taken by 1 Will. & Mary, c. 8, "An Act for abrogating the Oaths of Allegiance and Supremacy, and appointing other Oaths;" or, being one of the people called Quakers, may make and subscribe the declaration of fidelity prescribed by 1 Will. & Mary, c. 18, "An Act for exempting their Majesty's\* Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws;" which oaths or affirmations any one or more of the commissioners by whom such assessors shall be appointed, who shall themselves have taken the oaths required by this act to be taken by commissioners, have hereby power, and are hereby required to administer, as also all and every such other oaths or affirmations, as are by this act, or any act or acts relating to duties to be assessed under the regulations of this act, required or allowed to be taken before such commissioners, by any officer or person whatever, in any matter or thing touching the execution of this act, or any act or acts granting the said duties as aforesaid.

Sect. 11. That every person to be appointed such assessor shall, and he is hereby required also to take the *oath* (a), or, being one of the people called Quakers, to make and subscribe the solemn affirmation, before the commissioners for executing this act, in the form set forth in the schedule to this act annexed (marked B.); and if any person, to be appointed assessor as aforesaid, shall presume to act in the office or employment of an assessor, before he shall have taken the said oath or affirmation (as the case shall require), he shall forfeit and pay, for every such offence, the sum of 50l.

Sect. 12. That in all cases the assessors so to be appointed as aforesaid, shall, from time to time, make and deliver in writing their certificates of assessments of all the duties given to them in charge as aforesaid, unto the respective commissioners, or any two or more of them, on or before the fifth day of June yearly, or as soon after as conveniently can be done; and the commissioners to whom such assessments shall be so delivered, or any two or more of them, shall forthwith set their hands to the said respective assessments, testifying their allowance of the same; and the said commissioners, or any two or more of them, are hereby required to sign and seal three duplicates of the said assessments, to be prepared by their clerk, and forthwith to nominate and appoint two of the persons named or presented in each of such assessments to be *collectors*, or any other two such persons as such commissioners are hereby authorised to appoint, for the respective divisions and places for which collectors shall be so presented (b), and to deliver, or cause to be delivered, one of the said *duplicates* of such assessments, so by the said commissioners allowed, *together with warrants under the hands and seals of two or more of the said commissioners for collecting the same, unto the respective persons by them nominated to be collectors*; and one other of the said duplicates to the surveyor of the district for the time being; and the third of the said duplicates to be kept by such clerk for the use of the said commissioners: and the said collectors are hereby enjoined and required to make demand of the several sums contained in such duplicates, from the parties charged therewith, or at the places of their last abode, or on the premises charged with the assessment, as the case may require, *within ten days after the said duties shall respectively become payable, next after such assessments shall have been delivered to them*; and, upon payment thereof, to give *acquittances under their hands*

(a) But now a declaration is substituted for the oath, by 5 & 6 Will. 4, c. 62; see title "*Oath*."

(b) The insertion of the name of a person as collector of the assessed

taxes, in the warrants of the commissioners, is not a sufficient appointment to that office. (*R. v. Radley, Forrest*, 150.)

(without taking anything for such acquittances, the stamp duty for the same excepted) (a), unto the several persons who shall pay the same; and that such acquittances shall be full and perfect discharges to every such person who shall pay the same, against his Majesty, his heirs and successors.

This section, it will be seen, provides for the appointment of collectors. And see further, sections 16, 18, p. 793; 30, 31, p. 802; 46, 47, pp. 809, 810; and 45 Geo. 3, c. 71, s. 2, p. 809; and 48 Geo. 3, c. 55, s. 7, *infra*.

#### 4. APPOINTMENT OF COLLECTORS, THEIR POWERS, DUTIES, AND LIABILITIES.

We have already seen the mode in which collectors are nominated and appointed. See 43 Geo. 3, c. 99, s. 12, *ante*, p. 786.

The 48 Geo. 3, c. 55, s. 7, enacts, that every collector shall have 3*d*. in the pound for what money he shall pay to the receiver-general in due time for all the duties in this act, except schedule (L).

Sect. 13 of 43 Geo. 3, c. 99, enacts, that such persons as shall be presented to the said commissioners, as before directed, to be collectors, shall, if required so to do, *give good and sufficient security* to any two or more of such commissioners equal to the amount of the whole duty, and sum and sums of money assessed in and to be collected in each district or place as aforesaid, by such collectors respectively, for their duly paying such monies assessed as aforesaid, as shall come to their hands, and for their duly demanding the sums assessed of the respective persons from whom the same are payable; and in case of non-payment thereof, their duly enforcing the powers of this act against such who make default; which security the said commissioners, or any two or more of them, are hereby authorised and empowered to take, *by a joint and several bond with two sureties at the least* (b), to and

1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.

Collectors.

Collectors shall give certain security.

(a) A collector of taxes exacting a duty, in respect of which there had been no charge at all in the assessment upon the person from whom the payment was exacted, is not liable to the penalties under the 43 Geo. 3, c. 99, s. 12, though guilty of a fraud at common law. (*Lister* q. t. v. *Priestley*, *Wightw.* 405.)

The 23 Geo. 3, c. 90, s. 4, for paving and lighting the parish of St. Martin, which prohibits, under a penalty, any person, during the time he shall be collector of any tax, or hold any office of profit, or be interested in any contract or work to be done in the execution of that act, from acting as a committee-man under the act, does not extend to a collector of the assessed taxes. (*Lee* v. *Birreld*, 1 M. & Sel. 482.)

The 6 & 7 Will. 4, c. 28, provides that persons required to give security to different departments of the revenue, including the commissioners of taxes, may do so by a transfer of stock or deposit of exchequer bills, instead of executing a bond; and other sections relate to the proceedings to enforce such securities.

(b) But a bond with one surety only is valid. (*See Peppin* v. *Cooper*, 2 B. & Al. 431.) In the same case, it was held, that the due collection of the rates for one year was a compliance with the condition of the bond, under the particular terms of such bond. And although it appeared, from the condition of the bond, that H. A. and G. P. were both appointed collectors, it was held that such bond, being for the due collection by H. A. only, might be put in suit against the surety, without first selling the goods of G. P.

A joint collector of taxes is liable for any deficiency in the collection for the year, in the amount received by his coadjutor, although he has not himself collected during the time, and although his appointment may not have been quite formal, if he has in any manner acknowledged his appointment, or acted or received a share of the poundage at any time. And the court will set *insuper* on him, although a re-assessment has been made on the parish, and the amount of the deficiency collected, and paid over to the receiver-general. And if he should



1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.

\* *Sic in act.*

in the names of any two or more of such commissioners, in such penal sum as aforesaid, and with a condition thereto to the effect before mentioned; and on failure of the persons so first named or appointed to be collectors giving such security, if required, the said commissioners, or any two or more\* of them, shall be at liberty and are hereby authorised to appoint any other sufficient persons, who can give such security as aforesaid, residing within the limit of the same district or place, to be collectors of the said duties respectively; and every such bond given by way of such security, as aforesaid, shall be prosecuted by such commissioners on any failure or default of the said collector or collectors: Provided that such bond shall not be subject to any stamp duty whatever: provided always, that if no persons can be found within the limits of such districts or places respectively, who are willing or able to give such security, then and in such case the persons who were first presented to the respective commissioners, as

have procured a rule to be made absolute for discharging a former *insuper*, and for the restoration of the money levied under it by *distringas*, without having served the order nisi on the parish, the court discharging such a rule, will do so, with costs. (In the matter of *insupers* set upon *John Bromley and William Baylies*), joint collectors of taxes for the parish of *Welford*, 5 Price, 5.)

See, also, *In re Moorly*, 5 Price, 5.

By 43 Geo. 3, c. 99, the bond given to the commissioners by a collector of taxes is to be conditioned for demanding the taxes, enforcing the provisions of the act, and paying the sums collected to the receiver-general. The defendant was sued on a bond which contained those conditions, and also a condition for accounting and paying to the commissioners: and it was held, that this latter condition might be rejected as surplusage, and did not avoid the bond. (*Collins and others v. Gwynne*, 7 Bing. 423; 5 M. & Payne, 276; 9 Bing. 544; 2 M. & Scott, 640.) And it was held that in an action against the surety, it is a bad plea that the commissioners and receiver-general had not taken the steps to enforce payment from the collector, as directed by the above act. (*Wilks v. Keely*, 1 Crompt. & Mees. 249.)

*Collins and others v. Gwynne*, 7 Bing. 544; 2 Moore & Scott, 640; 5 Moore & Payne, 276. Such a bond need not be taken to his majesty and his successors. The collector in default on such bond is a competent witness against his surety. The sale of the collector's lands and goods is not a condition precedent to putting such bond in suit. It is a breach of the condition of payment to pay money collected for a given year to the account of a different year. It need

not be stamped, although not taken in the precise amount required by the statute. See the cause and other points, *Gwynne v. Burnell and others*, 2 Bing. N. S. 7; 9 Bing. 544.

It is no objection that the surety's bond is conditioned for payment by the collector to the receiver-general and to the commissioners, or that it is conditioned for payment at the times by the acts appointed, though no times in fact are appointed by the acts. (*Gwynne v. Burnell*, 2 Bing. N. S. 7.)

It was held, if there be two collectors of taxes appointed under the 43 Geo. 3, c. 99, s. 13, for a single parish, by the commissioners, one for one division of the parish, called the Upper Parish, and one for another, called the Lower Parish, and they accordingly collect the taxes separately from the several inhabitants of their respective divisions: in case of a deficiency in the amount of the taxes collected, through the misconduct of either, the whole parish must be re-assessed, and not the particular district, the collector of which has misapplied the money, and from the collection of whose taxes the deficiency arises, although the taxes of the other division have been collected and paid over to the receiver-general. (*Ex parte Henllan*, 7 Price, 594.) But in *Barss v. Digby*, 1 New Rep. 281, it was held that where a constablewick consisted of several hamlets, and two collectors of the duties on houses, &c., were appointed for each hamlet, if the collector or collectors of any one hamlet failed in duly paying over the money collected, the particular hamlet only where the collector or collectors have failed is liable to a re-assessment, under 20 Geo. 2, c. 3, and not the whole constablewick.

before directed, shall be collectors of the monies assessed as aforesaid, within the limits of such districts or places respectively.

By 6 & 7 Vict. c. 24, s. 4, it is enacted, that upon the trial of any action or suit against the sureties of a collector of any of the duties aforesaid, or of the duties arising from the land tax, upon any bond entered into, either in pursuance of any act relating to the said respective duties or otherwise, or upon the execution of any writ of inquiry of damages in such action or suit, the production of an account in the handwriting of such collector, or signed by him, of any sum or sums of money collected or received by him, for or on account of the said respective duties, or any of them, shall be sufficient proof of the receipt by such collector of every such sum and sums of money therein mentioned on account of the duties given to him in charge for collection; and that, as well in any such action or suit as aforesaid, as upon all other occasions whatsoever, any schedule delivered upon oath by such collector in pursuance of any such act as aforesaid, and containing or purporting to contain the names of persons who have made default in payment of the said respective duties, or any of them, and of the sums remaining in arrear, shall be sufficient evidence to charge such collector and his sureties respectively with all other sums of money comprised in the assessment or assessments given to him in charge to collect, and not included in such schedule or previously accounted for and paid over to the proper officer for receipt; and all such sums not so included in such schedule, or previously accounted for and paid over, shall be deemed to have been collected and received by such collector, and to remain in his hands unpaid and in arrear.

Sect. 5. That where in any action or suit by the commissioners acting in the execution of the said acts, or of the acts relating to the land tax, upon any bond entered into, either in pursuance of any such act or otherwise, the said commissioners shall, without their own wilful neglect or default, fail to recover a verdict against the defendant or defendants in such action or suit, and costs shall be awarded to the said defendant or defendants, or where in case of any suit in equity being brought against the said commissioners in relation to any such bond, and they shall be adjudged to pay costs to the plaintiff or plaintiffs in such last-mentioned suit, the said commissioners shall not be personally liable to the payment of any such costs, but the same shall be defrayed by an assessment upon the inhabitants of the parish or place in relation to which the bond which shall have been the subject of such action or suit shall have been given, and which assessment the commissioners acting in the execution of the said respective acts are hereby required and authorised to make, sign, and allow as soon as conveniently may be after such costs shall have been awarded and ascertained; and the said commissioners shall cause such assessment to be made, collected, levied, and recovered in the same manner as other assessments of costs are by the said recited act or this act directed to be made, collected, levied, and recovered, and shall cause the same to be paid over to the person or persons entitled to such costs.

Sect. 6. That all the authorities, powers, and provisions contained in any act or acts now in force relating to the recovery of the duties aforesaid, or any of them respectively, either under the warrant of the commissioners directed to the collectors in their respective districts, or by process from her Majesty's court of exchequer, shall be construed and deemed to be applicable to, and shall be applied, enforced, and put in execution for the levying and enforcing the payment of any sum or sums assessed by the said commissioners for costs, either under the authority of this act or of any other act or acts relating to the said duties, or any of them respectively.

The 17 & 18 Vict. c. 85, an act for better securing the collecting and accounting for the land tax, assessed taxes, and income tax by the collectors thereof, recites that under and by virtue of the several acts

1. *The Acts relating to Management of Commissioners.*

6 & 7 Vict. c. 24.  
Evidence against collectors and their sureties of sums collected and not paid over by the collectors.

Costs awarded against commissioners in actions or suits relating to collectors' bonds to be raised by assessment on the parish.

Powers and provisions of acts relating to the recovery of duties to be put in force for the recovery of costs assessed on the parish.

17 & 18 Vict. c. 85.

1. *The Acts relating to Management of Commissioners.* relating to the land tax, the assessed taxes, &c., the respective commissioners acting in the execution of the said acts respectively are authorised and empowered to require the persons to be appointed collectors of the said taxes and duties respectively to give good and sufficient security for the duly paying such monies assessed under the said acts respectively as shall come to their hands, and for the due performance in other respects of their duty as such collectors, in the manner in the said acts respectively mentioned:—And that, owing to the omission of the said commissioners to require such good and sufficient security to be given by the persons appointed by them to be such collectors, or owing to the inability of such persons to give the requisite security, the inhabitants of many parishes and places have frequently suffered by being subjected to re-assessment for monies collected and misappropriated by such collectors; and it is expedient to amend the laws in that behalf, and to make better provision for securing the duly collecting, accounting for, and paying over the said taxes and duties by the respective collectors thereof: and enacts that,—

17 & 18 Vict. c. 85.

Commissioners of inland revenue may require security to be given by collectors of taxes.

Sect. 1. It shall be lawful for the commissioners of inland revenue, in any case, and whenever they shall think fit, to give notice to the respective commissioners acting in the execution of the said acts relating to the said taxes and duties respectively, or any of them, in or for any district or division, that the said commissioners of inland revenue require that the persons appointed or to be appointed collectors of the said taxes or duties, or any of them, in or for any parish or place, or all or any of the several parishes or places specified in such notice, and within such district or division, shall give security to the satisfaction of the said last-mentioned commissioners for the due collecting, accounting for, and paying over of the monies collected or to be collected by such persons respectively, and for the due performance of their duties as such collectors as aforesaid; and it shall also be lawful for the said commissioners of inland revenue, in any case in which they shall think fit, to cause the like notice to be given to any person or persons who may have been appointed such collector or collectors as aforesaid; and after such notice to the said commissioners acting as aforesaid it shall not be lawful for them to appoint any person to be such collector in or for any such parish or place as aforesaid unless he shall previously give such security; and in case any person who may have been appointed such collector, and to whom such notice as aforesaid shall be given, shall neglect or omit to give such security within the time thereby limited for that purpose, his appointment and authority as such collector shall cease and determine from the time of such neglect or default.

In default of security being given commissioners of inland revenue may appoint collectors.

Sect. 2. If, after any such notice as aforesaid given by the commissioners of inland revenue, there shall be any neglect or delay in the appointment of collectors who shall previously have given such security as by this act is required, or any neglect or omission on the part of any person or persons who may have been appointed such collector or collectors to give such security, it shall be lawful for the commissioners of inland revenue, by warrant signed by any two or more of them, and in such form as they shall think proper, to appoint such person or persons as they shall think fit to be collector or collectors of all or any of the said taxes and duties in or for any parish or place, or in or for several parishes or places, in or with respect to which any such neglect, delay, or omission as aforesaid shall have occurred; and such person or persons so appointed by the said commissioners of inland revenue to be such collector or collectors as aforesaid shall have, use, and exercise and they are hereby invested with all such powers and authorities for the collecting, levying, and enforcing the payment of the said taxes and duties respectively assessed or charged in the assessment thereof for any such parish or place as by the laws in force any collector or collectors duly appointed by the commissioners acting in

the execution of the acts relating to the said taxes and duties respectively could or might use or exercise or are invested with; and any warrant of the commissioners of inland revenue directed to any person or persons appointed by them to be such collector or collectors as aforesaid shall have the like force and effect, and confer the like power and authority, as any warrant of the said commissioners acting as aforesaid directed to any person or persons duly appointed by them to be collector or collectors of the said taxes and duties or any of them.

Sect. 3. The security by this act required to be given in pursuance of any such notice as aforesaid shall be by bond to her Majesty, her heirs and successors, to be entered into by such collectors respectively, with two or more sufficient sureties, to be approved by the commissioners of inland revenue, or with any guarantee society so approved, and in such sum or sums as the said last-mentioned commissioners shall think proper in that behalf; and the condition of every such bond shall be, that the said collectors shall duly demand the said taxes and duties respectively of the several persons on whom the same are assessed or charged, or from whom the same are payable, and in case of non-payment thereof that such collectors shall duly enforce the powers of the several acts in that behalf against those who make default, and that such collectors shall duly account for and pay over all such monies as shall come to their hands as or for any such taxes or duties as aforesaid to the receiver-general of inland revenue, or other proper officer appointed for the receipt of such taxes and duties; and the said condition shall also contain such further and other terms and provisions as the commissioners of inland revenue may deem to be fit and proper for securing the duly collecting, accounting for, and paying over by the said collectors of all such taxes and duties, and the true and faithful execution of their office of collectors, without fraud or delay; and every such bond and the condition thereof shall be in such form as the commissioners of inland revenue shall provide or cause to be prepared for the purposes aforesaid.

Sect. 4. Upon the appointment by the commissioners of inland revenue of any person or persons to be the collector or collectors of the said taxes and duties or any of them in or for any parish or place, the commissioners acting in the execution of the acts relating to such taxes and duties respectively shall cause duplicates, signed by them, of the assessments of the said taxes and duties respectively in or for such parish or place, to be delivered to such collector or collectors; and any person who shall have in his custody or possession any such duplicate, and shall refuse to deliver over the same to any such collector, on demand made by him for the same, shall forfeit 100*l*.

Sect. 5. No parish or place shall be answerable for the acts, neglects, or defaults of any collector of the said taxes or duties, or any of them, who shall be appointed by the commissioners of inland revenue, or who shall give security to the satisfaction of the said commissioners, in pursuance of this act, nor shall any parish or place be liable to be re-assessed for any arrear or deficiency of the said taxes or duties arising from any default or failure of such collector.

Sect. 6. It shall be lawful for the commissioners of inland revenue to provide books of printed forms of receipts, with counterfoils, applicable to the receipt of the said taxes and duties respectively, by the several collectors thereof, and also to make such orders and regulations for the filling up and using of such receipts and counterfoils by the said collectors, and for the inspection of such books of forms and counterfoils by the inspectors or surveyors of taxes or other officers, as the said commissioners may deem to be necessary or proper for checking the collection or receipt of the said taxes and duties respectively by the several collectors thereof; and it shall be incumbent upon and deemed to be the duty of the said collectors

1. *The Acts relating to Management of Commissioners.*

17 & 18 Vict. c. 85.

Security to be by bond to her Majesty, with sureties approved by commissioners of inland revenue.

Duplicates of assessments to be delivered to collectors appointed by commissioners of inland revenue.

Parishes not to be answerable for the default of collectors appointed by commissioners of inland revenue.

Commissioners of inland revenue may provide books of printed forms of receipts and counterfoils to be used by collectors of taxes.

*1. The Acts relating to Management of Commissioners.*

17 & 18 Vict. c. 85. Collectors to give receipts for taxes on the proper printed forms, and to fill up counterfoils.

Penalty for refusal or neglect.

43 Geo. 3, c. 99. Churchwardens, &c., or inhabitants of parishes, may require security to be taken from collectors, and name persons willing to give such security.

Collectors, when required by the churchwardens, &c., to deliver a statement of their account, on penalty of 20*l*.

Within the bills of mortality, St. Mary-le-bone, and St. Pancras, the appointment of collectors to belong to the resident commissioners.

respectively to conform to and comply with such orders and regulations accordingly.

Sect. 7. Every collector of any of the said taxes or duties who shall have been supplied with any such book of printed forms of receipts and counterfoils as aforesaid, upon receiving any sum of money for any of such taxes or duties to which the said forms are applicable shall give a receipt for the same upon one of such printed forms, properly filled up and signed by him, and shall also properly fill up the counterfoil of such receipt, and keep the same remaining in the said book; and if any such collector shall refuse, neglect, or omit to give such receipt as aforesaid, or to fill up and keep such counterfoil in the manner herein directed, or if any such collector who shall have been supplied with any such book of printed forms as aforesaid shall give any receipt for any of such taxes or duties otherwise than upon such proper printed form as aforesaid, he shall forfeit for every such offence the sum of 10*l*. to be recovered in like manner as any other penalty may be recovered under the acts relating to the said taxes or duties for which receipt shall have been given.

Sect. 14, of 43 Geo. 3, c. 99, that if any two or more of the inhabitants of the district or place for which a collector or collectors may be named as aforesaid, being respectively charged to any of the said duties to be assessed under the regulations of this act, or the churchwardens or overseers, or guardians of the poor of any description, or any two or more of them, or the select vestry, or any seven or more of them, where a select vestry shall be authorised to act for any parish or place, shall require security to be taken of the collector or collectors to be appointed for the parish or place on behalf of which such application shall be made, and shall name a fit and proper person or persons to be a collector or collectors, who respectively are willing to give such security, it shall not be lawful for such commissioners to appoint collectors for such duties, or any of them, until such security be given; and if the person or persons returned to the said commissioners, according to this act, to be a collector or collectors, shall not have given, or shall not give such security, then it shall be lawful for such commissioners to appoint such persons, and no others, who shall have been named to them by the persons respectively before mentioned, as fit and proper persons to be collectors, and who will give such security as shall be required.

Sect. 42. That the collector or collectors appointed for any parish, ward, or place as aforesaid, when required so to do by the churchwardens and overseers, or guardians of the poor, or any two of them, or the select vestry as aforesaid, or any seven of them, shall deliver to them respectively an account in writing of the sums received by such collector or collectors, and of the sums in arrear, and of the sums remaining in his or their hands, and also of the sums paid to the receiver-general; and if any collector shall refuse or neglect so to do, within fourteen days after such demand shall be made, he shall forfeit and pay to the use of the poor of such parish or place, where such collector shall reside, the sum of 20*l*.

Sect. 15. That within the bills of mortality, the parishes of St. Mary-le-Bone, and St. Pancras, in the county of Middlesex, the appointment of the collectors of such duties as aforesaid shall belong wholly to such of the commissioners for executing this act, who shall reside in the wards or parishes for which such collectors respectively are to be appointed, in case there shall be two or more commissioners there resident, and no other commissioner shall in such case interfere; and it shall be lawful for such commissioners residing within the respective wards or parishes aforesaid, to appoint two or more persons to be collectors, who shall have given such security as aforesaid, whether such persons shall have been presented by the assessors as aforesaid, or named by the inhabitants, or churchwardens and overseers, or

guardians of the poor, or any two or more of them, or any seven or more of the vestry, where a select vestry shall be appointed as aforesaid, and who shall be thought by such commissioners to be of ability to execute the office of collector; and that in default of presenting or naming such persons who shall be willing to give such security, then the said commissioners residing as aforesaid shall name such persons as they shall think of ability to execute the said office: Provided always, that where two or more commissioners shall not be resident in any such ward or parish as aforesaid, for which collectors are to be appointed, then a commissioner or commissioners residing in any adjacent ward or parish in the same county or city may appoint or concur with a commissioner, so residing, in the appointment of such collectors: and every person appointed a collector in pursuance of this act, shall also, by virtue of such appointment, act as an assessor for the same parish, ward, or place.

Sect. 16. That if any assessor or collector to be appointed as aforesaid, shall wilfully neglect or refuse to take upon himself the office of an assessor or collector, to which he shall be appointed, or shall wilfully neglect or refuse to perform his duty in the due and speedy execution of this act, or of any act or acts granting duties to be assessed under the regulations of this act, for which he shall be appointed an assessor or collector, such commissioners, or any two or more of them, may and shall, by virtue of this act, impose on such person or persons so refusing or neglecting, for every such offence, a fine not exceeding 20*l.*: provided that no person inhabiting any city, borough, or town corporate, shall be compelled to be an assessor or collector for any part of such duties, in any place or places out of the limits of the city, borough, or town corporate, in which he shall so inhabit.

Sect. 17. That in all privileged and other places being extra-parochial, and not within the constablewicks or precincts of the respective assessors to be appointed as aforesaid, and in all parishes and places where two able and sufficient inhabitants cannot be found, the said commissioners, or any two or more of them, shall and they are hereby required to nominate and appoint two fit persons, living in or near the said privileged or other places as aforesaid, to be assessors for the said places, and to make and return their said assessments in like manner as by this act is directed, in any parish or place, and also in like manner and in the like cases to appoint one or more collector or collectors, who are hereby required to collect and pay the sums given to them in charge, according to the rules prescribed by this act, for collecting and paying the sums of money assessed in any parish or place.

And see *post*, sects. 32 and 33, pp. 802, 803.

Sect. 18. That in case such commissioners shall neglect to appoint assessors, as directed by this act, or in case the assessors by them appointed shall neglect to perform what shall be lawfully required of them, that then and in every such case it shall be lawful to and for the surveyor or surveyors appointed or to be appointed as herein mentioned, to do and perform such and the like services as ought to be done by such assessors, until such assessors shall be appointed, and shall act with effect.

Sect. 19. That no commissioner, assessor, or collector, who shall be employed in the execution of any such act or acts herein mentioned, or of this act, shall be liable, for or by reason of such execution, to any penalty or penalties, other than such as by this act, or the said act or acts, are or may be inflicted.

See further, sects. 27, 32, 33 to 47, 48, 49, 50, 51, 52, *post*, as to collectors paying over money.

By 24 & 25 Vict. c. 91, s. 45; every collector of land and assessed taxes shall, upon clearing his account for any of such taxes, deliver to

*1. The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.

Where two or more commissioners shall not be resident, the commissioners of the adjacent parish, &c., may appoint or concur in the appointment of collectors.

Collectors shall also act as assessors.

Assessors or collectors refusing to take the office, or neglecting their duty, may be fined by commissioners, not exceeding 20*l.* Inhabitants of cities, boroughs, &c., not compelled to be assessors or collectors out of the limits of such places.

In privileged and extra-parochial places, and where two sufficient inhabitants cannot be found, the commissioners to appoint assessors and collectors in like manner.

If assessors neglect their duty, surveyors may perform the same.

Officers executing this act, or other acts herein mentioned, not liable to any other penalties than such as are contained therein.

24 & 25 Vict. c. 91.

1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.

the commissioners by whom he was appointed the duplicate of the assessment for the year and tax to which such account relates, together with the books or book of receipts and counterfoils furnished for his use in the collection of such taxes, or in default thereof he shall forfeit the sum of 50*l*.

See further, as to *Collectors' Bond*, 3 Geo. 4, c. 88, and 48 Geo. 3, c. 141, *post*.

With analogy to a decision on land-tax act, in *Rex v. Clarke and another*, 3 A. & E. 287; 4 Nev. & Man. 671, a collector of assessed taxes may take and keep a constable with him, if he reasonably expect forcible resistance of payment, but not otherwise.

5. INSPECTORS AND SURVEYORS, THEIR POWERS AND DUTIES, AND OF RECEIVERS-GENERAL.

Treasury may from time to time appoint officers for the inspection of duties under commissioners of taxes.

43 Geo. 3, c. 99, s. 20, it shall be lawful to and for his Majesty, his heirs and successors, or the lords commissioners of the treasury, or any three or more of them, now or for the time being, or the high treasurer for the time being, from time to time, to constitute and appoint such person or persons as his Majesty, his heirs and successors, or the said commissioners of the treasury, or the high treasurer, for the time being, shall think proper, to be the officers for the survey and inspection of the duties under the management of the commissioners for the affairs of taxes, within that part of Great Britain as aforesaid, and for doing and executing all things belonging to the office of inspector or surveyor, according to the powers vested in them by this act, or by any other act or acts for granting the said duties to be assessed under the regulations of this act, or any of them.

Surveyor guilty of vexatious or corrupt practices to forfeit 100*l*., and on conviction be dismissed.

Sect. 23. That if any such surveyor or inspector shall knowingly or wilfully, through favour, underrate or omit to charge any person or persons, or shall be guilty of any corrupt, vexatious, and illegal practices in the execution of his office, such surveyor or inspector shall, for every such offence, forfeit the sum of 100*l*. and on conviction shall be discharged from his said employment.

(As to duties performed by receivers-general now, see *post*, 1 & 2 Will. 4, c. 18, p. 798.)

Receiver-general to deliver a certificate of sums received to person appointed by commissioners of district, or collector of taxes, under a penalty not exceeding 20*l*.

Sect. 53. That at every time and place appointed by the commissioners of the district, for the collectors to pay in the monies to be paid to the receiver-general or his deputy, the said receiver-general or his deputy, under his hand, shall deliver a list or certificate, fairly written, to such person as such commissioners, or any two or more of them, or the commissioners for the affairs of taxes, or any three or more of them, for the time being, shall under their hands authorise and appoint to attend then and there for that purpose, containing the several and respective sums of money then and there or before that time paid by the respective collectors for each parish, ward, or place in that district; and in case there shall be any refusal or neglect in delivering such lists or certificates as aforesaid, such receiver-general or his deputy, so refusing or neglecting, shall forfeit any sum of money not exceeding 20*l*.

Sect. 54 provides that receivers-general are to pay the monies received by them into the exchequer.

Sect. 55. See 5 & 6 Will. 4, c. 20, s. 11, *post*, p. 816, and sect. 19, *ante*, p. 793; and sects. 35, 36, 37, 38, pp. 804, 805; 59 Geo. 3, c. 118, s. 1, *post*, p. 811.

Sect. 56 imposes penalties on receivers-general returning any sums in arrear or *insuper* after they have received the same, recoverable by action or information.

Commissioners of taxes to give notice of the death or removal of any receiver-general to the commissioners of the districts.

Sect. 57. That if any such receiver-general shall die or be removed, notice thereof shall be given by the commissioners for the affairs of taxes, to two or more commissioners acting for each district in the county or place for which such receiver was appointed, before the time

appointed for the next quarterly payment of any of the duties herein mentioned, and so from time to time upon the death or removal of such receiver-general.

Sect. 58. Receiver-general not to maintain action against the hundred on being robbed, unless there are three persons in company with him when robbed, see *post*, 3 Geo. 4, c. 88, s. 10, p. 798.

The 45 Geo. 3, c. 71, s. 1, recites that it is expedient to amend the several laws relative to the duties under the management of the commissioners for the affairs of taxes in the particulars herein mentioned, and enacts, "that every account of the monies received and paid by any receiver-general of the said duties, or any of them, or by his deputy or deputies in England; which shall hereafter be transmitted to the office for taxes according to the usage thereof, shall be verified on the oath or oaths of such receiver-general, or his deputy or deputies, to the best of his or their knowledge or belief, which oath may be administered by any commissioner acting in the execution of any of the acts relating to the said duties in the district where he shall so act; and such oath shall be deemed to be of the like force and effect, to infer pains and penalties, as any oath to be administered by commissioners in any matter relating to the execution of the said acts: saving always, to the barons and officers of his Majesty's court of exchequer in England, and the commissioners for the affairs of taxes, their power respectively to administer such oaths according to ancient usage.

By 3 Geo. 4, c. 88, s. 2, persons appointed or to be appointed by the respective commissioners acting in the execution of the acts relating to land-tax and assessed taxes, in the several counties, divisions, cities, towns, parishes, wards, and places, within England or Wales, shall severally and respectively observe and be subject to the rules and regulations set forth in this act, and the penalties therein contained; which rules and regulations shall be deemed a part of this act, as if the same had been severally inserted herein under special enactments.

1. *The Acts relating to Management of Commissioners.*

48 Geo. 3, c. 99.

45 Geo. 3, c. 71. Receiver-general's accounts, in England, may be verified on oath before commissioners of district.

3 Geo. 4, c. 88.

Receivers and other persons, to be appointed under this act, to observe the rules herein mentioned.

#### "No. 1.—Rules and Regulations touching the office of Receiver-General.

"Seventh.—Whenever any receiver-general shall be required to keep open daily or weekly (except as before excepted) an office for the receipt of taxes within his district, it shall be lawful for such receiver-general, and he is hereby required, to fix the day or days for receiving the same from each collector whose place of residence shall be within ten miles of the said office, according to such course, order, and rotation, as shall be approved by the commissioners for the affairs of taxes, or any three or more of them; according to which rotation every such collector shall attend to make his payment, so that each such collector may attend four or a less number of days in each quarter of a year, or quarterly, as the commissioners of the district shall think expedient, and shall certify to the commissioners for the affairs of taxes according to the said course, order, and rotation; of which day or days of payment due notice shall be given to the respective commissioners acting in the execution of the said acts and this act; and where the residence of any collector or collectors within the district of any such receiver-general mentioned in this rule shall not be within the distance before-mentioned, the receipts of the monies from time to time collected by them shall be held by the deputy of such receiver-general in the manner prescribed in this act in regard to other districts.

Receivers keeping daily or weekly offices may appoint particular days of receipt from collectors.

"Eighth.—All bonds, contracts, and securities, to be entered into with or taken from the receivers-general to be appointed, or with or from any other person or persons to be appointed under this act, and their respective sureties, to remit the monies arising by the taxes granted by the said acts, or any of them, or any other duties or sums of money under the management of the commissioners for the affairs of taxes, shall be to his Majesty, his heirs, and successors, and entered into with and taken by the commissioners for the affairs of taxes, and shall be filed and kept in the office of the said commissioners; and no such bond, contract, or security, shall be entered or filed at any of the offices in the court of Exchequer unless and until it shall be neces-

Bonds, &c., to be to his Majesty.



1. *The Acts relating to Management of Commissioners.*

3 Geo. 4, c. 88.

sary to be made matter of record for the purpose of suing process at law in the said court of Exchequer at Westminster, for the recovery of any penalty forfeited thereon, or any debt or duty owing thereon or against the person and effects of the parties bound thereby, their heirs, executors, or administrators respectively; in which cases the commissioners for the affairs of taxes shall cause the same to be delivered into the office of the King's remembrancer of the said court; and such delivery shall be deemed and be as valid and effectual as if the bonds, contracts, and securities, had been taken in one of the said offices, according to the course or practice of the said court heretofore used, to all intents and purposes whatsoever; and shall be applied and made use of in such and the like manner, in any suit, action, or process of law, on the said bonds, contracts, or securities, as if the same had been from the caption thereof respectively filed in the said court."

"No. II.—Rules and Regulations respecting the office of Receiver-General in relation to Assessed Taxes.

Receivers may report failures, &c., of collectors to commissioners.

"Third.—It shall be lawful for every such receiver-general, or his authorised deputy, as aforesaid, whenever he shall see occasion, to report to the commissioners acting in the execution of the said acts and this act, in any matter or thing touching the conduct of any collector or collectors aforesaid; and in every case where there shall be a failure of assessing or charging the duties in any parish, ward, or place, parishes, wards, or places, or of raising or paying the several sums respectively charged on any person or persons chargeable in such parish, ward, or place, parishes, wards, or places, or in the making out or returning any duplicates of assessments by their clerk, or of doing any other act required by the acts relating to the said taxes or by this act, to be done by such clerk, stating therein the particulars of his complaint against such collector or collectors, or other person or persons acting as aforesaid, and what in his opinion ought to be done therein; and whenever any receiver-general, or his authorised deputy, shall have reported to the commissioners acting for any parish, city, town, or place, or any ward, or other division, any matter or thing which in the opinion of such receiver-general, or his authorised deputy aforesaid, shall require the particular consideration of the said commissioners, it shall be lawful for them, and they are hereby required, to summon a meeting within a reasonable time after such report; of which meeting the receiver-general, or his authorised deputy aforesaid, shall have notice, and may and shall attend thereat, and assist in the consideration of the measures necessary and expedient to be taken in the execution of the said acts and this act."

Proceedings by commissioners thereon.

"No. IV.—Rules and Regulations respecting the Offices of other Persons acting in the Execution of the said Acts.

Commissioners may call collectors before them previous to each receipt, and make orders for payments;

"First.—It shall be lawful for the several commissioners acting in the execution of the said recited acts and of this act, in their respective divisions, and they are hereby required, whenever they shall have received notice, as directed by this act, of any receipt to be holden by the receiver-general of the monies collected and received within the limits of the district of the said commissioners respectively, and on or immediately before the day or days of receipt to be so holden, to call before them the respective collectors appointed for each parish or place, and to examine him or them upon solemn oath or affirmation, and assure themselves of all and every of the sum or sums of money and arrears of the said duties and compositions respectively that shall have been collected, or remain to be collected, and which shall be payable to the said receiver-general or his deputy, or such other person or persons as shall be authorised to receive the same under this act, at such ensuing receipt, and to make such order therein for the payment of the same to the receiver-general or his deputy, or other person or persons aforesaid, as they shall judge necessary; and the said commissioners shall thereupon cause to be delivered to every such collector a certificate of the sum to be so paid to the said receiver-general or his deputy, or other person or persons aforesaid, together with their order for the payment of such sum or sums as aforesaid, under the hands of the said commissioners, or any two of them, and which certificate shall be delivered by every such collector to the receiver-general or his deputy, or other person or persons aforesaid, at the time of his attending to make such payment of the monies by him collected and received; and the said commissioners shall enter

and give certificate to collector of payment to be made by him.

Certificate, &c., entered.

every such certificate and order in a book, to be by them provided for that purpose; and it shall be lawful for the inspector and surveyor acting for the district of the said commissioners, at all convenient times, to inspect the said book, and take such extracts therefrom as shall be required by the said commissioners for the affairs of taxes.

"Second.—Whenever the respective commissioners shall have signed and allowed any assessment of assessed taxes, and the days to be appointed for hearing appeals therefrom shall have elapsed, the clerk to the said commissioners shall cause to be numbered the pages in each book of assessment, and the sums assessed in each page to be duly cast up; and they shall forthwith, and before the next ensuing receipt for the said taxes, transmit to the receiver-general of the district, or his deputy, the total amount of the sum to be paid to such receiver-general by and for each parish, ward, or place in the respective districts, together with the names of the collectors appointed to collect and receive the same."

1. *The Acts relating to Management of Commissioners.*

3 Geo. 4, c. 88.

Books of assessment made up. Proceedings thereon.

Sect. 5. That the several and respective persons who, for the time being, shall be commissioners for putting in execution the acts relating to assessed taxes and to the land-tax respectively, shall be commissioners for putting in execution this act, and the powers herein referred to or contained, in all and every the respective counties, riding, divisions, shires, and stewartries, cities, boroughs, cinque-ports, towns, and places in Great Britain; and the several collectors, surveyors, inspectors, and inspectors-general for the time being, appointed or to be appointed to put into execution the said acts, shall respectively be collectors, surveyors, inspectors, and inspectors-general, to put in execution this act, within the limits of their respective divisions, districts, and places, to which they are or shall be appointed; and the said commissioners and others before-mentioned are hereby empowered and required to do and perform all things necessary for putting this act into execution, in the like and in as full and ample a manner as they or any of them are or is authorised to put in execution the said acts, and all and every the powers and authorities, methods, rules, directions, penalties, forfeitures, clauses, matters, and things, contained in any of the said acts (except where such provisions are varied, or other provisions are substituted by this act), shall in collecting, levying, and accounting for the said duties and monies respectively, be severally and respectively duly observed, practised, and put in execution throughout Great Britain, in relation to all and every the duties and monies aforesaid, as fully and effectually, to all intents and purposes, as if the same powers, authorities, methods, rules, directions, penalties, forfeitures, clauses, matters, and things, were particularly repeated and re-enacted in the body of this act, and applied to all and every such duties and monies aforesaid, as part of the provisions of this act.

Commissioners, &c., of assessed taxes and land-tax to be commissioners, &c., to execute this act.

Sect. 6 provides that the appointment of clerk to the land-tax is to be made under the provisions of assessed tax acts. 43 Geo. 3, c. 99.

Sect. 7. That from and after the passing of this act, in every case where any account of a receiver-general of land or assessed taxes, to which any bond now or hereafter to be entered into to his Majesty, filed of record in the Court of Exchequer; or to be taken by the commissioners for the affairs of taxes under the provisions of this act, shall relate, has been or shall be stated and passed in the office of the said auditors or their deputy, and have been or shall be declared before a baron of the Court of Exchequer, and no balance shall appear to remain due on such account from any such receiver-general, the said auditors or their deputy shall, as soon as conveniently may be after such declaration, cause a certificate thereof to be made out and signed by them or him, and the total amount of the sums forming the charge and discharge parts of the said account, with the words "Even and Quit," shall be inserted in such certificate, and delivered to the said receiver-general; and every such certificate so made out and signed

Bonds of receivers general to be delivered up on accounts being balanced.

Certificate of account settled delivered to receiver-general, and by him to the exchequer.

1. *The Acts relating to Management of Commissioners.*

3 Geo. 4, c. 88.

Receiver-general not required to travel in company with more than one person on each receipt.

1 & 2 Will. 4, c. 18.

The receivers-general to be discontinued from the 10th October, 1831, except in certain cases.

Appointment of inspectors of taxes to be officers for receipt for county districts.

Salary not to exceed on an average 100*l.* per annum, and 100*l.* for a clerk.

One receiver-general to be retained for the London district.

as aforesaid, and delivered into or lodged by the said receiver-general in the office of the king's remembrancer in the Court of Exchequer, or in the office of the said commissioners, shall be a sufficient authority to the officers of the said court and to the said commissioners having the custody of the bond of the said receiver-general, for the year to which the said certificate shall relate, to deliver up such bond to the said receiver-general or to his authorised agent in that behalf, a receipt for such bond being indorsed on such certificate, and signed by the party receiving the same.

By sect. 8 the office of certain receivers-general are to be discontinued on the death, resignation, &c., of officers.

Sect. 9 makes regulation for enrolling accounts of receivers-general in the king's remembrancer's office only.

Sect. 10. That no receiver-general, or his authorised deputy, to be appointed under the provisions of this act, shall be required to travel in company with more than one person on each receipt respectively; and such receiver-general, or his authorised deputy, so travelling as last aforesaid, shall have the same remedies and advantages in his protection on his said receipt, to all intents, as if he had travelled in company with two or more persons, in the manner directed by the said acts; anything in the said recited acts contained to the contrary notwithstanding.

The 1 & 2 Will. 4, c. 18, s. 1, reciting that it is expedient to reduce the expense of receiving and remitting the public revenue so far as the same may be effected with the due security thereof, enacts, that the several persons who now act as receivers-general of the land-tax and the respective duties of assessed taxes under the management of the commissioners for the affairs of taxes, in and for the several counties and divisions in England and Wales (except as hereinafter provided), shall, from and after the 10th day of October, 1831, cease and discontinue to execute and perform the duties of their respective offices in and for the counties and districts for which they now respectively act, and that their respective appointments as such receivers-general in the further receipt of the said duties shall thenceforth determine.

Sect. 2. That in lieu and in the place of the receivers-general to be discontinued under this act, it shall and may be lawful to and for the said commissioners of his Majesty's treasury for the time being to nominate and appoint from time to time such of the persons for the time being appointed to execute the offices and duties of inspectors of taxes to be officers or persons for the receipt of the land-tax, and of monies payable for the sale and redemption thereof, and the respective rates and duties of assessed taxes under the management of the commissioners for the affairs of taxes, within and for such counties, districts, and circuits of receipt as the said commissioners of the treasury shall from time to time authorise or direct: and it shall also be lawful for the said last-named commissioners to grant annual allowances to such receiving inspectors as a remuneration for executing and performing the additional duties imposed on them by this act, and for the expense of a clerk, not exceeding on an average the sum of 100*l.* for such remuneration, and a like average sum of 100*l.* for such clerk.

Sect. 3. That it shall and may be lawful for the said commissioners of his Majesty's treasury to retain and continue one of the present receivers-general for the city of London and county of Middlesex, and to appoint him receiver-general of a district or circuit of receipt, to be called "The London Receipt," and for the other purposes hereinafter provided, which London receipt shall comprise the city of London, the city and liberty of Westminster, the county of Middlesex, and such parts of the respective counties of Surrey, Essex, and Kent, as the said commissioners of the treasury shall from time to time direct; and

it shall not be necessary for any person hereafter appointed receiver-general of such receipt to have previously executed the duties of or to be also an inspector of taxes.

Sect. 7. That every inspector to be appointed for the receipt of the taxes and monies under this act, and every receiver to be retained or continued under this act, shall attend at such places, and observe such route in proceeding from place to place for the receipt of the taxes, rates, and duties aforesaid from the several collectors of the parishes, wards, or places within the district assigned to such officers respectively, and at such times, and from time to time, as shall be directed and approved by the said commissioners for the affairs of taxes.

Sect. 8. That it shall be lawful for the said commissioners for the affairs of taxes to make arrangements with any person or persons to receive from any receiving inspectors, or any receivers to be continued as aforesaid, the taxes, rates, and duties aforesaid to be from time to time collected by and paid to any such officer, or his deputy duly authorised in the manner directed and allowed by this act, and to remit and pay, or cause to be remitted and paid, the several sums by such person or persons to be received into the receipt of his Majesty's exchequer at Westminster, or into the Bank of England, or to the receiver-general of the London district, or the commissioners for the affairs of taxes for the time being respectively, in such manner, at such time and times, and upon such terms and conditions, as shall from time to time be settled and allowed by the said commissioners under the direction of the said commissioners of his Majesty's treasury; and also to arrange with the same or any other persons to receive from any collector or collectors of the taxes, rates, and duties aforesaid, all such taxes as shall remain in the hands of any such collector or collectors, or as shall be collected by him or them within the intervals of the circuits of receipt of the said officers respectively; and the names and places of receipt of the person or persons with whom such arrangement shall be made as last aforesaid shall be sent to the clerks to the said commissioners for their respective districts; and such commissioners shall from time to time examine such collectors touching their collections, and make such order or orders for the payment of the monies by them respectively collected and received, as are directed and enjoined by the acts now in force relating to the respective rates and duties aforesaid.

Sect. 11. That every officer for receipt to be appointed under this act shall execute the duties of his office in person, without any deputy, except in cases of illness, or other temporary and sufficient cause, in which the same may be allowed to a receiver-general under the provisions of the laws now in force.

Sect. 12. That all and every the powers, provisions, rules, directions, clauses, liabilities, matters, and things contained in and imposed by any act or acts now in force relating to the land-tax, and to the sale and redemption thereof, and the rates and duties of assessed taxes, or to the office of a receiver-general answerable in the receipt of the exchequer, or which by law any receiver-general is authorised, empowered, or required to do, execute, follow, and perform, shall, so far as the same are not altered or varied by this act, continue to be in full force, and be observed, followed, practised, applied, and put in execution by and against the several officers or persons appointed, retained, or continued for the receipt of the said taxes under this act, to all intents as if such officers respectively were appointed receivers-general in the execution of the said acts or of this act, and as if the same powers, provisions, matters, and things were severally repeated and re-enacted by this act; and all inspectors so to be appointed officers for receipt as aforesaid shall also execute and perform the duties relating to the office of an inspector of taxes, in all respects as if he had not been appointed an officer of receipt as aforesaid; and all provisions, powers, clauses, rules, directions, penalties, matters, and things con-

1. *The Acts relating to Management of Commissioners.*

1 & 2 Will. 4, c. 18.

Receiving inspectors to make circuits for receipt from collectors.

Providing for remitters.

Officer for receipt to execute duties in person.

Officers for receipt under this act to perform all the duties of receivers-general, &c.

Provisions of for-

1. *The Acts relating to Management of Commissioners.*

1 & 2 Will. 4, c. 18.  
mer acts to be in force and followed, except when repugnant to the present.

4 & 5 Will. 4, c. 60.  
Distributors of stamps to be appointed officers for receipt of taxes.

43 Geo. 3, c. 99.  
Surveyors certify surcharges twice in the year.

Notice thereof to be given to the party surcharged. Surcharges omitted the first half-year, may be made for the whole year.

Persons overcharged may appeal to the commissioners on giving ten days' notice to the surveyor or assessor (c).

Commissioners to hear appeals, unless notice has not been given, in which case the assessment or surcharges must be confirmed.

Assessments not to be altered before the time for hearing appeals, except in cases authorised by the act or recited acts.

tained in any such former act or acts shall be applied to this act, and be observed, followed, practised, and put in execution (where not repugnant hereto) as fully and effectually, and to all intents and purposes whatsoever, as if this act had not been passed.

By 4 & 5 Will. 4, c. 60, s. 12, the lords of the treasury may appoint such of the distributors of stamps as they shall think proper to be officers for the receipt of the land-tax and assessed taxes within such counties, districts, or circuits as they shall direct.

## 6. OF SURCHARGES AND APPEALS, &c. (a).

43 Geo. 3, c. 99, s. 21. That every such surveyor or surveyors, inspector or inspectors, shall twice in every year, to wit, between the first day of July and the tenth day of August following, and between the first day of December and the tenth day of January following, yearly, and at no other time (b), certify in writing to two or more of the said commissioners all such surcharges as they may lawfully make, and shall give or cause to be given to every person so surcharged, or leave or cause to be left at his or her last or usual place of abode in the district where such surcharge shall be made, notice in writing of such surcharge, and of the amount for which he or she shall have been charged by virtue of such certificate.

Sect. 22. That if any surveyor or surveyors, inspector or inspectors, shall omit to make a surcharge on or before the first day of August in any year, it shall be lawful for the said surveyor or surveyors, inspector or inspectors, to make such surcharge or surcharges on or before the first day of January following, for the whole year.

Sect. 24. That if any person or persons shall think himself, herself, or themselves respectively overcharged or overrated by any assessment or surcharge to be made by virtue or in pursuance of any act or acts before-mentioned, it shall be lawful for him, her, or them respectively, to appeal to the commissioners for putting in execution the said act or acts in relation to such assessment, on giving at the least ten days' notice thereof to the said surveyor or inspector, or to one or more of the assessors of the place wherein such assessment or surcharge shall be made, of such intention to appeal; and the said commissioners or any two or more of them, shall and they are hereby required to hear and determine all such appeals, except where it shall appear to the said commissioners that the person appealing shall have omitted to give such notice thereof to the proper officer aforesaid, in which case it shall be lawful for the said commissioners, and they are hereby required, to dismiss the appeal, and to confirm the assessment or surcharge appealed against.

Sect. 25. That no assessment which shall be delivered to such commissioners, or any two or more of them, by any such assessor or assessors, shall be altered by them or any of them, before the time for hearing and determining appeals, and then only upon a surcharge or surcharges not appealed against, and according to such surcharge or surcharges, or upon the commissioners hearing the matter of appeal particularly relating thereto, upon a general appeal-day duly

(a) An appeal against a conviction on 24 Geo. 3, c. 21, for not entering horses, &c., must be to the quarter sessions next after the conviction, and not after the execution. (*Prosser v. Hyde*, 1 Term R. 414.)

(b) But now, by 43 Geo. 3, c. 141, No. 4, Rule 1, *post*, on or before the 15th of December in each year of assessment.

(c) By the 48 Geo. 3, c. 141, No. 3, Rule 6, all appeals against the first assessment in every year shall be heard and determined between the 20th of August and 10th of September following. By the same act, No. 4, Rule 2, all appeals against surcharges shall be heard and determined between the 20th of January and 20th of February following.

appointed, save and except in such cases only where such commissioners are specially authorised to alter or rectify any such assessment by the act or acts before-mentioned; and if any clerk to such commissioners, or any other person or persons, shall alter, or cause or procure or suffer to be altered, any assessment, after the same shall have been allowed by such commissioners, except as aforesaid, or in cases of appeal, and by order of the said commissioners, or any two or more of them, made after appeal as aforesaid, every such clerk or other person shall forfeit and pay the sum of 50*l*.

Sect. 26. That the said commissioners, or any of them, shall not, upon the hearing any such appeal, make an abatement or defalcation in the charge made upon any person by assessment, or by the surcharge of any assessor or assessors, surveyor or surveyors, inspector or inspectors, as aforesaid, but the charge or surcharge shall stand good and remain part of the annual assessment, unless it shall, upon the hearing of such appeal, appear to the commissioners then present, or the major part of them, by examination of the appellant upon oath or affirmation, or by other lawful evidence to be produced by him or her, that such person is overrated in or by any such assessment or surcharge, and unless the appellant shall produce before the said commissioners, a true, perfect, and complete list, account, declaration, or return, as shall or may be required by the act or acts before-mentioned, and verify the same upon his or her oath or affirmation, and such surveyor or inspector and assessor may then and there attend to give his or their reasons in support of the said assessment or surcharge, and may, if he or they think proper, produce any lawful evidence in support of the same; and such surveyor, inspector, and assessor, shall have full power and free liberty to be present during all the time of hearing such respective appeals, and of the said commissioners determining the same: Provided always, if upon such appeal it shall appear to the said commissioners that the persons\* so assessed or surcharged is\* or ought to be charged to any amount beyond the amount contained in such assessment or surcharge, it shall be lawful for the said commissioners to charge such person to the matter or thing, or amount of the sum omitted, in like manner and at the like rate as they might have done, if a full, true, and perfect assessment had been made in the first instance: Provided also that no barrister, solicitor, or attorney, or any person practising the law, shall be allowed to plead before the said commissioners on such appeal for the appellant or officers, either *visà voce* or by writing.

Sect. 27. That such commissioners, or any two or more of them, shall and they are hereby required to give such collectors as aforesaid notice at what time or times, within the periods herein limited, and at what place or places, the appeals of any person or persons who shall think themselves aggrieved as aforesaid may be heard and determined; and every such collector is also hereby required, within ten days after such notice from the said commissioners, to cause public notice to be given in every parish church or chapel of ease belonging to any such parish within his district or division, immediately after divine service on the Lord's day (a) (if divine service shall be performed in the said parish within that time), or otherwise in the church of the next adjoining parish, of the time and place so appointed by such commissioners for hearing and determining appeals as aforesaid, and shall also cause the like notice to be fixed in writing upon the door of each of the said respective parish churches or chapels of ease, that all persons who shall think themselves aggrieved as aforesaid may know when and where to make their appeal to the said commissioners.

Sect. 28. Appeals of which notice is given, to be heard and deter-

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43 Geo. 3, c. 99.

Clerks or other persons altering the assessments improperly to forfeit 50*l*.

Commissioners, on hearing appeals, not to make abatement unless the party is overrated, and produces a list of particulars as required by the acts verified on oath.

Surveyor and inspector may attend in support of the assessment or surcharge, and produce evidence if they think proper, &c.

\* *Sic* in act.

If commissioners shall find upon appeal that the person is not fully assessed or surcharged, they may charge the amount omitted.

No barrister or solicitor allowed to plead before commissioners.

Commissioners to give notice to collectors of times and places for hearing appeals. Collectors within ten days to cause public notice to be given thereof in church (a).

and fix notice in writing on church doors.

(a) But see as to notices in church at or after divine service, 7 Will. 4 & 1 Vict. c. 45, s. 2.

1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99. Determination of the commissioners on appeals to be final, except where cases are required for the judges' opinion.

Provision for assessments and duplicates not being signed in due time.

When there has not been a meeting of commissioners within the time prescribed by this act, they may meet at other times, and execute any of the powers therein contained.

Where there has been no appointment of assessors or collectors, two justices of the peace in any county, or the chief magistrate and justices in any city, &c., may appoint them (b).

mined within certain periods. Now superseded by 48 Geo. 3, c. 141, *post*.

Sect. 29. That all such appeals once heard and determined by the said commissioners, or any two or more of them, or the major part of them, present on the day or days by them appointed for hearing of appeals, shall be final; and neither the determination of the commissioners, nor the assessment then and there made thereupon, shall be altered on any pretence whatever at any subsequent meeting, or at any other time or place, except always in such cases where the opinion of the judges shall be required according to the provisions of any act or acts concerning the same (a).

Sect. 30. And whereas it may happen that the assessments and duplicates of the said duties may not be signed and allowed in due time, to the prejudice of the said revenue, for want of a sufficient number of commissioners acting or attending where and when such assessments or duplicates ought to be allowed; be it further enacted, That in all cases it shall be lawful for the said commissioners appointed for putting any act or acts relating to the said duties in execution, living in any parish or place within the same county, riding, or division, and they are hereby empowered and required, to allow and sign such assessments or duplicates which are or shall be wanting for any such parishes or places as aforesaid.

Sect. 31. That if at any time there shall not have been any meeting or meetings of two or more of the said commissioners, and a due execution of any of the powers created by this act, or the act or acts before-mentioned, within or at the time or times, or according to the manner or circumstances directed or prescribed in and by this act, or the said act or acts, it shall be lawful to and for any two or more of the persons appointed commissioners, and they are hereby required, in all and every the respective counties, ridings, cities, boroughs, cinque-ports, and towns respectively, in that part of Great Britain as aforesaid, wherein such default shall have happened, to meet and execute the said powers at any other time or times, anything herein contained to the contrary thereof notwithstanding; and they are hereby authorised and required forthwith, or as soon as may be after the time or times at which such meetings should have been held, and such powers should have been executed, to meet and execute the same, and cause the same to be executed, so as that all the duties by law payable on assessment be duly and effectually charged, raised, levied, collected, and paid to his majesty, his heirs and successors; and all such meetings and acts of the said commissioners, or any two or more of them, shall be deemed and are hereby declared to be good and valid, to all intents and purposes, notwithstanding any such omission or defect.

Sect. 32. That if, in any parish, ward, or place, in that part of Great Britain as aforesaid, any failure shall happen in the appointment of the assessor or assessors, or collector or collectors, whereby the assessments or collection of the duties is likely to be delayed, it shall be lawful for any two justices of the peace of any county in that part of Great Britain as aforesaid, the ridings of York, or divisions of Lincoln, whenever such failure shall happen in any parish, ward, or place within such county, riding, or division, or in any town or place adjoining thereto, such town or place not being a county of itself herein mentioned, and for the chief magistrate and justices of the peace of any city, town, or place, being a county of itself, and they and every

(a) The commissioners were ordered by the Court of Exchequer to state and sign a case for the appellants, for the opinion of a judge, where a question arose respecting certain increase of duty made by a sur-

vveyor on the appellants. (*In re Yarmouth (Commissioners)*, 9 Price, 149.)

(b) In 48 Geo. 3, c. 141, s. 1, Rule 1, where assessors are to be appointed before 1st of April, annually, see *post*.

of them, on notice of such default to be given by the surveyor, are strictly enjoined and required to appoint an assessor or assessors, or a collector or collectors, as the case may require, observing therein the rules and regulations prescribed by this act for the appointment of such respective officers by commissioners; and if any person appointed by the justices or magistrates as aforesaid, to be an assessor or collector, shall wilfully neglect or refuse to take upon himself the office of an assessor or collector, or shall wilfully neglect or refuse to perform his duty in the speedy and faithful execution of his office; or if any person so appointed to be an assessor shall neglect or refuse to take the oath or affirmation directed to be taken by assessors by this act, as the case may require, every such person so offending shall forfeit and pay the sum of 50*l*.

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43 Geo. 3, c. 99.

Persons so appointed refusing to perform the duty, or to take the oath required, shall forfeit 50*l*.

## 7. OF DISTRAINING, &c., FOR ARREARS OF TAXES.

43 Geo. 3, c. 99, s. 33, that if any person or persons shall *refuse* to pay the several sum and sums charged upon him, her, or them, by any act or acts granting the duties herein mentioned, or any other duties to be assessed under the regulations of this act *upon demand* (a) made by the collector or collectors of the division or place, according to the precepts or estreats to him or them delivered by such commissioners, it shall be lawful to and for such collector and collectors, or any of them, who are hereby respectively thereunto authorised and required, for non-payment thereof, to *distrain upon the messuages, lands, tenements, and premises, charged with any sum or sums of money* (b), or to distrain the person or persons so charged, by his or their goods and chattels (b), and all such other goods and chattels as they are hereby authorised to distrain (b), without any further authority from the com-

Collectors, on payment of the duties being refused, to distrain

(a) It should seem, that a reasonable time must elapse between making a *formal demand* and taking a distress, or an action of trespass may be sustained. (*Gibbs v. Stead and another*, 8 B. & C. 528; 2 Man. & Ry. 547.) But see *Rex v. Ford and others*, 4 Nev. & Man. 451; 1 Har. & Wol. 46; where it was decided that in order to authorise a levy under 43 Geo. 3, c. 99, s. 33, for arrears of assessed taxes, it is not necessary that those arrears should have been demanded by the collector in person upon the householder in person, or that there should have been a direct refusal of payment to the collector in person; but it is sufficient if a demand have, in fact, been made by the collector, or a person authorised by him, and the householder has refused payment, whether on the ground of inability or for any other cause. Nor is it necessary that the collector should in the demand specify the *exact* sum. Nor is it essential that the collector should have his warrant with him at the time he distrains. (*Rex v. Ford and others*, 2 A. & E. 588; 4 Nev. & Man. 451.)

But where a demand is made not on the individual liable to pay, but on the premises whilst the occupier is *absent*, then a reasonable time must be allowed to elapse after the demand

made; otherwise the non-payment is not evidence of a refusal, and a distress will be unlawful. (*Gibbs v. Stead*, 8 B. & C. 528, 533, 4; 2 Man. & Ry. 552, 3.)

If a collector has himself paid the tax upon or without the request of the party assessed, *semble*, he cannot distrain after six months from the time of such payment have expired. See 48 Geo. 3, c. 141, No. 5, Rule 6, *post*.

(b) See the construction of this clause, and on what goods a distress may be made, and for what description of assessed taxes, *The Earl of Shaftesbury v. Russell*, 1 B. & C. 666; 3 D. & R. 34; *Juson v. Dixon*, 1 M. & Sel. 601: from which it is to be collected, that for assessments on *windows and houses*, which are charged upon the *premises*, any goods, even of a stranger upon the premises, may be taken. (*Juson v. Dixon*, 1 M. & Sel. 601.) But with respect to the duties on *horses, carriages, dogs, and others*, mentioned in C. D. E. F. G. H. I. J. K. of 43 Geo. 3, c. 161, which are charged only upon the *person*, only the goods of the person charged can be taken, except in instances expressly provided for. (1 B. & C. 669, *supra*.) One warrant of distress, for separate and distinct arrears, under different acts of parliament, is valid. (*Patchet*



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43 Geo. 3, c. 99. and keep the distress so taken four days, and if the duties are not then paid, to sell the same.

Collectors in the day-time may break open houses, having a warrant from the commissioners for that purpose, and taking a constable with them.

When sufficient distress cannot be found, the party may be committed to prison.

Question or difference respecting distress to be determined by the commissioners (a).

Warrants of commissioners may be executed in any part of county for which they are appointed.

When persons remove without paying the duties, the commissioners to certify the same to the commissioners of the place where the party can be found ;

who are to cause

missioners for that purpose than the warrant to such collector or collectors, delivered at the time of his or their appointment, and the distress so taken to keep by the space of four days at the costs and charges of the parties so refusing ; and if the said party doth not pay the respective sums of money so due within the said four days, then the said distress to be appraised by two or more of the inhabitants where the said distress is taken, or other sufficient persons, and there to be sold by the said officer for payment of the said money, and the overplus coming by the said distress (if any there be), after deducting the said money, and also the costs and charges of taking, keeping, and selling the said distress, which costs and charges the said officer is hereby authorised to retain, to be restored to the owner thereof ; and, moreover, it shall be lawful, in such case, to break open in the day-time any house, upon warrant under the hands and seals of two or more of the said commissioners, obtained for that purpose, calling to their assistance the constable, tithingman, or headborough, within the counties, shires, stewardries, cities, towns, and places, where any refusal, neglect, or resistance shall be made, which said officers are hereby required to be aiding and assisting in the premises, as they will answer the contrary at their peril ; and if any person or persons appointed to pay any of the duties charged by any act or acts, as aforesaid, shall refuse or neglect to pay the said sum or sums so appointed to be paid, by the space of ten days after demand, as aforesaid, where no sufficient distress can or may be found whereby the same may be levied, then, and in every such case, two or more of such commissioners are hereby authorised, by warrant under their hands and seals, to commit such persons to the common gaol, there to be kept, without bail or mainprize, until payment shall be made ; and, if any question or difference shall arise upon taking such distress, the same shall be determined and ended by two or more of such commissioners (b).

Sect. 34. Provided that nothing herein contained shall be construed to restrain the said commissioners, or any of them, from acting as commissioners in any part of the county, riding, division, or place for which they are appointed ; and that all warrants and precepts of the said commissioners shall and may be executed by the respective persons to whom the same are directed, in any part of the same county, riding, division, or place, for which they are appointed.

Sect. 35. And whereas it may frequently happen that persons quitting their dwelling-houses or places of residence may remove to other parishes or places, without first discharging or paying the duties charged upon him, her, or them, whereby the said duties made payable by this act will be lost, unless such person or persons so removing can, after such removal, be compelled to pay the same ; be it further enacted, that the commissioners acting by virtue of this act, within such parish or place where such duties are charged upon and unpaid by the person or persons removing, as aforesaid, shall sign and cause to be transmitted a certificate thereof to the commissioners acting within the parish or place where the person or persons making such default of payment shall happen to reside ; which commissioners, or

v. *Bencroft*, 7 T. R. 367.) *Seamble*, that according to *Rex v. Clarke and another*, 4 Nev. & Man. 671 ; 3 A. & E. 287, a collector may take and keep with him a peace officer, if he expect violent resistance on applying for payment ; but not so unless he has reasonable ground to expect a like resistance ; and a collector may detain without having his warrant with

him. (*Rex v. Clarke*, 4 Nev. & Man. 671.)

(a) See note (b) preceding page.

(b) In *The Earl of Shaftesbury v. Russell*, 1 B. & C. 666 ; 3 D. & R. 84, S. C., it was held, that as the jurisdiction of the superior courts was not expressly taken away, an action at common law might be maintained for a wrongful distress for taxes.

any two or more of them, shall and they are hereby empowered to raise and levy the said duties charged upon the party or parties removed, as aforesaid, and cause the monies so raised and levied to be paid to the collector of the parish or place from whence the said person or persons did remove, so as the same may be paid and applied according to the true intent and meaning of this act.

Sect. 36. That where any parish or place shall be in two or more counties, ridings, or divisions, the duties charged or to be charged in or for such parish or place shall be assessed, raised, levied, collected, and paid, by and under the commissioners acting for that part of the said parish or place where the church or other place of public worship aforesaid shall be situate, and that the whole of such parish or place shall be deemed, for the purposes of this act, to be situate in such county, riding, or division, wherein such church or other place of public worship shall be situate; and also where any dwelling-house, or any other premises occupied therewith hereby charged, shall be situate in two or more parishes, wards, or places, the whole duties to be charged thereon shall be assessed, raised, levied, collected, and paid in one of the said parishes, wards, or places only, and the parties so charged shall be relieved from any second assessment made thereon, or any part thereof, as in other cases of double assessments.

Sect. 37. That no goods or chattels whatever, belonging to any person or persons at the time any of the said duties to be assessed under the regulations of this act become in arrear, shall be liable to be taken by virtue of any execution or other process, warrant, or authority, or by virtue of any assignment, on any account or pretence whatever, except at the suit of the landlord for rent, unless the party at whose suit the said execution or seizure shall be sued out or made, or to whom such assignment shall be made, shall, before the sale or removal of such goods or chattels, pay or cause to be paid to the collector or collectors of the said duties so due, all arrears of the said duties which shall be due at the time of seizing such goods or chattels, or which shall be payable for the year in which such seizure shall be made, provided the duties shall not be claimed for more than one year; and in case the said duties shall be claimed for more than one year, then the said party at whose instance such seizure shall have been made, paying the said collector or collectors the aforesaid duties due for one whole year, may proceed in his seizure as he might have done if no duties had been so claimed; but in case of refusal to pay the said duties, the said collector or collectors are hereby authorised and required to distrain such goods and chattels, notwithstanding such seizure or assignment, and proceed to the sale thereof according to this act, in order to obtain payment of the whole of the said duties so assessed, together with the reasonable costs and charges attending such distress and sale; and every such collector so doing shall be indemnified by virtue of this act.

Sect. 38. That all remedies, advantages, powers, methods, and things, which by any act or acts concerning bankrupts, or concerning the method of recovering rent in arrear, are given or granted to any creditors, lessors, or landlords respectively, and all the powers and provisions of 27 Geo. 2, intituled "An Act for the more easy and effectual Proceeding upon Distress to be made by Warrants of Justices of the Peace;" and also of 33 Geo. 3, intituled "An Act to authorise Justices to impose Fines upon Constables, Overseers, and other Peace and Parish Officers, for Neglect of Duty, Masters of Apprentices for Ill-usage of such their Apprentices, and also to make Provision for the Execution of Warrants of Distress granted by Magistrates," as far as the same powers of the said last-mentioned act relate to the execution

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43 Geo. 3, c. 90. the amount thereof to be levied, and to be paid to the collector of the parish where the assessment was made.

Parishes or places being in two counties, the duties to be assessed in the county where the church is situate and houses situated in two parishes, the whole of the duties to be charged in one.

No goods to be taken by virtue of any process, except by landlord for rent, unless the party shall pay the arrears, not exceeding one year.

In case of refusal, the collectors may distrain and sell the goods.

Powers of the 27 Geo. 2 and 33 Geo. 3 to be used by commissioners, &c., in recovering arrears (a).

(a) See ante, sect. 33, and decision thereon.

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43 Geo. 3, c. 99.

Commissioners, quarterly or twice in a year at least, to call the collectors before them and examine them upon oath as to the sums collected by them and paid to the receiver-general; also as to the amount of arrears, and cause thereof (a);

also the collector of any former year.

Receiver-general, inspector, and surveyor, when required, to assist commissioners,

Collectors neglecting their duty may be dismissed, and the commissioners may from time to time appoint others.

Collectors dismissed to deliver, on demand of the commissioners, to the now collector, the certificates of assessments, &c., or in default to forfeit 50*l*.

of warrants of distress granted by justices of the peace, shall be used and practised by such respective commissioners, and by any collector, surveyor, or inspector as aforesaid, acting under the authority of such commissioners, for the recovering and securing any arrears of such duties, as are to be assessed under the regulations of this act, over and above the powers, remedies, rules, and regulations contained in this act, as fully and effectually as if the same remedies, advantages, powers, provisions, methods, and things were particularly and severally repeated and re-enacted in this act.

Sect. 39. That at the end of every quarter of a year appointed for the payment of the sums assessed, or any part thereof, or within *one calendar month thereafter*, or at such other times as they shall think expedient, but *nevertheless twice at least, videlicet*, on or before the *first day of November* and the *first day of May following* in every year, and so from time to time as often as shall be necessary, the several and respective commissioners appointed to put this act in execution, or any two or more of them, within their district, shall and are hereby empowered and required to call before them the collector or collectors appointed within each parish or place, as the case may require, and to examine him or them upon oath or solemn affirmation, and assure themselves of the sum or sums of money that shall have been collected and paid to such collector or collectors of the duties given to them, or any of them in charge, and to make such order therein for the payment of the same to the receiver-general, on the day or time appointed for receiving the same, as they shall judge necessary; and also to assure themselves of the sum or sums in arrear, and the cause or causes thereof; and also, upon such oath or affirmation, to examine the said collector or collectors touching the due payment over of any sum collected by him or them in any preceding part of the same year, and in every such case to make such order therein as aforesaid; and the said commissioners are hereby empowered and required, in every year, to call before them the collector or collectors appointed in each parish, ward, or place, in any former year, where any sum or sums of the duties charged by virtue of any act or acts before mentioned shall be in arrear or unpaid to the receiver-general, and to examine the said collector or collectors on such oath or affirmation as aforesaid, and to assure themselves of the sum or sums of money collected by him or them, and of the sum or sums in arrear, and also the sum or sums paid over to the receiver-general, and of the sums remaining in the hands of the said collector or collectors, and to make such order therein as they shall judge necessary to prevent any failure in the payment in any part of the assessment charged by virtue of any such act or acts, and so from time to time, as long as any of the arrears of the said duties, or any of them charged upon any of the said parishes, wards, or places, shall be in arrear; and the respective receivers-general, inspectors, and surveyors, shall, when required so to do, be assisting to such commissioners in their inquiry in all matters relating to their respective offices.

Sect. 40. That if any wilful delay or failure shall happen in demanding, receiving, recovering, or paying over any monies of the duties assessed as aforesaid, through the default or neglect of any collector or collectors, it shall be lawful for such commissioners to revoke the appointment of such collector or collectors so in default or neglecting, as aforesaid, and by indorsement on the same precept or precepts of appointment, or otherwise by their precept, to appoint a collector or collectors in his or their stead for the remainder of the year, with full power to collect the arrears of the sums then due; and it shall also be lawful for such commissioners, whenever the same shall be necessary,

(a) See 20 Geo. 2, c. 3, s. 34; 43 Geo. 3, c. 161, s. 84; and 48 Geo. 3, c. 141.

to revoke such last-mentioned appointment, and to appoint a collector or collectors in like manner, from time to time, and as often as any such collector or collectors shall be guilty of such default or neglect, provided security be taken, if required, as in the case of an original appointment, and provided the like security be taken on every such new appointment as shall have been required to be taken on the appointment of collectors at the commencement of any year, as hereinbefore is mentioned; and such collector or collectors so in default as aforesaid, shall, on the demand of such commissioners, deliver up to them, or in their presence, to the collector or collectors newly appointed, all such certificates of assessments which he or they were charged to collect, and all accounts of receipts and vouchers of payment as aforesaid, and also shall pay to the receiver-general all sums then in his or their hands, at such time as such commissioners shall appoint; and if any person, after such removal from the office of collector, shall refuse or neglect to do any matter or thing required by this act, every such person shall forfeit and pay the sum of 50*l.*, to be charged in any assessment of such duties as aforesaid, for such parish, ward, or place, and recovered as such assessment may be recovered, and shall also remain liable to such other forfeitures and disabilities that may be incurred by virtue of this act, for detaining the said monies in his hands after such demand made of the same as aforesaid.

Sect. 41. That if any collector, being duly summoned, shall refuse to attend such respective commissioners, or shall not answer all such lawful questions as shall be demanded of him by such commissioners, touching the execution of his office of collector, or shall refuse or neglect to produce to them the certificates of assessments, accounts, or vouchers of such receipts or payments as aforesaid, or shall not obey the order of such commissioners to be made as before directed, every such collector shall forfeit and pay the sum of 50*l.*, to be charged upon him in any assessment as aforesaid, and to be recovered as such assessment may be recovered, over and above any forfeiture or disability that may be incurred by virtue of this act for detaining monies of the said duties in his hands, contrary to this act; and whenever any money of the said duties herein mentioned, shall be detained in the hands of any collector or collectors, or any penalty or penalties imposed on any collector or collectors shall remain unpaid, and the same, or any part thereof, cannot be recovered by or under the warrant or authority of the respective commissioners, or the said respective commissioners shall neglect to issue such warrant, then such part thereof as cannot be so recovered, which shall have arisen from the said duties, shall be recoverable as a debt upon record to the king's majesty, his heirs and successors, with all costs and charges attending

1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.

Collectors refusing to attend commissioners with their assessments, &c., to forfeit 50*l.*

If monies in the hands of collectors cannot be recovered under the warrant of the commissioners, or the commissioners shall neglect to issue such warrant, the amount shall be recoverable as a debt upon record (a).

(a) If a collector of assessed taxes does not pay over all sums collected by him, the parish is answerable to the crown for the deficiency. (*R. v. St. George's, Hanover Square, 3 Aust. 920.*)

A collector of taxes in custody under an extent is not entitled to be discharged, although his deficiency has been made good to the crown by a reassessment upon the parish. (*R. v. Bennett, Wightw. 1.*)

Local commissioners for the affairs of taxes issued their warrant, under the 43 Geo. 3, c. 99, ss. 41 and 52, for seizing and securing the real and personal estate of a collector refusing to pay over money received by him, but

as matter of arrangement did not proceed to sell the property so seized under such warrant, which had been issued expressly to secure a certain sum of money said to be due from him to the crown. Five days after, the solicitor for the taxes (the collector being declared a bankrupt on that day) issued extents, under which was taken not only the property already secured by the warrant of the commissioners of taxes within their jurisdiction, but also other real and personal property in other places, for the purpose of levying precisely the sum claimed on the same account; but it being eventually discovered that the sum actually due to the

1. *The Acts relating to Management of Commissioners.*

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the same; and such part thereof which shall arise from any penalty as aforesaid, may be recovered by action or information, as other

crown for monies received by the collector, amounted to *very considerably more* than the sum for which the warrant (and consequently the extent) had issued, but *not* to double the amount, the crown sold all the property, and applied the proceeds in discharge of the public debt, in aid of the parish, as far as it extended to satisfy it, which produced a net sum much larger than the sum sought to be raised originally, but not sufficient to pay the whole debt; which sum, so produced, was paid into the receipt of the exchequer in August, 1817. Under such circumstances, this court refused to make absolute a rule (founded on the objection, that it was having recourse to two modes of proceeding for the same debt) granted to show cause (obtained on a motion made in July, 1819,) why it should not be referred to the deputy remembrancer, to take an account of the money due to the crown, with a view to get the surplus, beyond the amount of the sum originally sought to be levied, paid back to the assignees of the bankrupt, holding that, for such a debt so incurred in such a character, the crown was entitled to use *every* mode of proceeding given by statute. The delay in the application, although not conclusive against assignees, strongly prejudiced their claim. (*R. v. Jones*, 8 Price, 108.)

The protection of parishes from re-assessment is an object of the care of the Court of Exchequer; and the necessity of process of extent in the second degree for that purpose, where a collector has become defaulter, is a strong ground for granting a *fiat*; and the existing liability of the parish is consequently no answer to the objection of the crown debt not being in danger. (*R. v. W. Bell*, 11 Price, 772.)

Distinction between extent in aid and extent in chief in the second degree:—

The statute of the 57 Geo. 3, does not apply to extents in chief in the second degree. Therefore, the crown may proceed by extent to recover a small debt due from a person indebted to the crown debtor (a collector of taxes), who had received and misapplied the crown's money, although he be not a debtor to the crown within the fourth section of that statute. Neither does the recent rule of court,

respecting extents in aid, apply to extents in chief in the second degree. It is not necessary, in the affidavit made for obtaining a baron's *fiat* for such an extent, in such a case, that there should be any averment of the insolvency of the crown debtor, or any fact stated from which it may be inferred. (*Id. ibid.*)

Nor is it necessary, *in such a case*, that collusion should be negatived. (*Id. ibid.*)

The sheriff is entitled to levy costs, under 43 Geo. 3, c. 99, on an extent against a collector of taxes; and the sheriff's poundage is included in the word charges, and may be levied; and it is payable where the money is paid in before a *venditioni exponas* has issued, although that proceeding is obviated thereby.

But if the agent in the country, of the solicitors for taxes, have received any money from the defendant as costs under the levy, or the sheriffs have taken anything for extra costs, as bailiff's fees and keeping possession, the court will order them to refund.

It does not seem to be necessary under that act, that the commissioners should issue their warrant against the collector to recover the duties detained, to authorise the issuing of an extent against him as a condition precedent; or if it be, it is rather a ground of a motion to set aside the extent for irregularity.

The bill of the solicitors prosecuting the extent for the crown may be taxed. (*R. v. Collingridge*, 3 Price, 280.)

It was doubted whether a re-assessment could go for the duties on carriages, servants, and horses. (*R. v. Wimbledon*, 3 Anst. 855.)

If the acting commissioners of taxes refuse (unless indemnified) to proceed to make a *re-assessment* on a parish, to which the deficiency applies, in execution of the powers entrusted to them by the several acts of parliament, where an *insuper* has been set on the parish, whose collector is a defaulter, the Court of Exchequer will order them to do so, by rule to show cause, in the nature of a *mandamus*; and will also order a service on their clerk to be deemed good service: the crown is not limited to any time within which to make such an application. (*In re Wootton*, 6 Price, 105.)

penalties may by this act be recovered, with full costs of suit; and the sum so recovered shall be paid to the receiver-general, in aid of the parish or place answerable for the same.

Sect. 46. That the respective commissioners aforesaid shall cause two duplicates of every assessment to be made out on parchment by their clerk, within one month at farthest after the tenth day of February, after the making the said assessment yearly, and one of them to be delivered unto the respective receivers general, and the other of them transmitted into the office of king's remembrancer in the exchequer, for which duplicates the proper officer shall give acquittances *gratis*, so as every of them may be duly charged to answer their respective collections and receipts, and the said duplicates shall be made for the same hundreds, rapes, laths, wapentakes, wards, parishes, or places or divisions, for which distinct duplicates are directed to be made out, or may be made by virtue of the said recited act for granting an aid by a land-tax before mentioned; and every such duplicate shall contain the names and surnames of the several assessors and collectors for every hundred, rape, lath, wapentake, ward, parish, or place, or other division, and the full amount of the sums given in charge to the collectors throughout the whole year shall be inserted, without any discharge, diminution, or defalcation, on any pretence whatever; and if any clerk to such commissioners shall neglect or refuse to make out and deliver such duplicates as aforesaid, within the time and in manner hereinbefore directed, or shall make any false entry, or omit any sum or sums in such duplicates, every such clerk shall forfeit and pay the sum of 100*l.*, and, on conviction thereof, shall be discharged from his said office.

45 Geo. 3, c. 71, s. 2. That the duplicates of the assessments directed by the said acts to be sent and delivered by the respective commissioners to the king's remembrancer in England, to be kept in his majesty's exchequer, shall hereafter be sent by them to and delivered at the office for taxes, for the previous inspection of the commissioners for the affairs of taxes, who may cause copies thereof, or any part thereof, to be taken, and who shall afterwards transmit such duplicates to the king's remembrancer for the purposes mentioned in the said acts; and if such duplicates shall not be so delivered within the time required by the respective acts in that behalf, the clerk to the commissioners who shall wilfully offend against the provisions of this act shall forfeit the sum of 50*l.*, to be recovered and applied as any penalty may be recovered and applied by any act relating to the said duties.

50 Geo. 3, c. 105, s. 5. That, in respect of the duties of assessed taxes, the said respective commissioners shall cause the duplicates required by the said act to be made out after the time appointed by the said act for making the supplementary assessments of the said duties yearly, and within one month at farthest after all appeals from the said supplementary assessments shall have been heard and determined, and so that the same may be delivered to the receiver-general and to the commissioners for the affairs of taxes respectively, on or before the day to be appointed for the receipt of the last instalment of the said duties next after the fifth day of April yearly; and in respect of the duties arising from the profits of property, professions, trades, and offices, the said respective commissioners shall cause the duplicates required by the said act to be made out after the time appointed by this act, for making the supplementary assessments of the said last-mentioned duties yearly, and within one month at farthest after all

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43 Geo. 3, c. 99.

Commissioners to cause two duplicates to be made out within one month after Feb. 10; one for the receiver-general, the other to be transmitted to the Remembrance Office.

Duplicates to contain the full sum given in charge to the collectors.

Clerks neglecting to make out duplicates, or making false entry, to forfeit 100*l.* and be dismissed.

45 Geo. 3, c. 71.

Duplicates of assessments directed to be sent to the remembrancer shall be sent to Tax-office.

50 Geo. 3, c. 105.

Time for making out and delivering duplicates of assessments enlarged.

In *R. v. Deane*, 2 *Anst.* 369, it was held, that where a collector of revenue gave a bond to the crown, the penalty

is a security against all the expenses of process and execution against him.

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appeals from the said supplementary assessments shall have been heard and determined, and so that the same may be delivered to the receiver-general and to the commissioners for the affairs of taxes respectively, on or before the day to be appointed for the receipt of the last instalment of the said last-mentioned duties next after the fifth day of July yearly; and no clerk to the said respective commissioners who shall make out and deliver the respective duplicates required by the said act within the time aforesaid shall be sued or prosecuted for or liable to the penalty contained in the said act by reason of not making out or delivering the said respective duplicates within the time directed by the said act.

43 Geo. 3, c. 99.

In case of failure in assessing the duties, or returning the duplicates for any parish, the receiver-general to certify the same to the barons of the exchequer, with the names of the commissioners, assessors, &c., who shall be respectively liable to process from time to time by *distringas*, on application of commissioners of taxes.

Commissioners of taxes to certify to the court of exchequer when the persons against whom such writ shall issue have complied with the directions of the act upon which the process may be respited or discharged.

By 43 Geo. 3, c. 99, s. 47, in case there shall be any failure of assessing or charging the said duties in any parish, ward, or place, or of returning the duplicates of the assessments made for any such parish, ward, or place, or of raising or paying the several sums charged upon any person or persons in any such parish, ward, or place, within the respective times limited by this act, the receiver-general acting for the duties charged or to be charged on such parish, ward, or place, shall and may, at any time after such failure hath happened, certify to the barons of the Court of Exchequer at Westminster, the particular parish and parishes, ward or wards, or place and places, and the particular division where any such failure hath happened, and the cause thereof, to the best of his knowledge, together with the names of the commissioners appointed, as aforesaid, to act for the hundred, rape, lath, wapentake, city, ward, town, or place, or the division wherein such failure hath happened, or any two or more of them residing within such division, hundred, rape, lath, wapentake, city, ward, town, or place, and also the names of the assessors and collectors, and the several persons belonging to such parish or place charged to such duties, and who shall have made failure in the payment thereof, in case an assessment shall have been made, which said commissioners, assessors, and collectors, and any person or persons charged with such duties, shall be respectively liable to process for such neglect by the order of such barons, according to the exigency of the case, which process shall be by writ of *distringas*, to be forthwith, and from time to time, as there shall be occasion, issued out of the said court, on the application of the commissioners for the affairs of taxes, against such of the said commissioners, officers, or persons, who shall have made such failure, upon which writ of *distringas*, the sheriff or other officer to whom the same shall be directed, shall return such issues as the said court shall order at the return of such writ; and immediate process shall thereupon issue for levying the same, out of and under the seal of the said Court of Exchequer, unless the said commissioners for the affairs of taxes shall certify to the said court, if in the term time, or to any one of the said barons, if in the vacation, that the commissioners, officers, and other persons against whom such writ issued, have complied with the directions of this act, in which case it shall be lawful for such court or baron to cause such process to be respited till a future day, and so from time to time, or to be finally discharged (a).

(a) If the acting commissioners of the land-tax, assessed taxes, &c., refuse (unless indemnified) to proceed to make a re-assessment on the parish to which the deficiency applies, in execution of the powers entrusted to them by the several acts of parliament, where *insuper* has been set on the parish whose collector is a de-

faulter, the court will order them to do so by rule to show cause in the nature of a *mandamus*. (*Ex parte the Inhabitants of the Parish of Wootton, Bedfordshire*, 6 Price, 103.)

If there be two collectors of taxes appointed under the 43 Geo. 3, c. 99, s. 13, for a single parish, by the commissioners one for one division

But by stat. 59 Geo. 3, c. 118, s. 1, no person or persons becoming or who shall have become bankrupt or insolvent shall be liable to be assessed to the duties of assessed taxes, after the fifth of April next after the time of such bankruptcy or insolvency, in respect of any article or articles kept and used for the purposes of trade, at or before the time of such bankruptcy or insolvency, which article or articles shall have been seized or surrendered, and *bonâ fide* sold under or by virtue of such bankruptcy or insolvency, and not kept or used by such bankrupt or insolvent, after the fifth day of April next after such bankruptcy or insolvency: provided that nothing herein contained shall be construed to affect the payment by the assignee or assignees of every such bankrupt or insolvent, and such assignee or assignees shall pay the duties assessed on every such bankrupt or insolvent, at the time of such bankruptcy or insolvency, up to the fifth day of April next after the same shall have happened, as if this act had not been made.

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59 Geo. 3, c. 118.

Not liable to assessment after the 5th April which shall next happen after bankruptcy or insolvency, for articles kept and used for trade.

By stat. 5 & 6 Will. 4, c. 20, s. 16, after reciting, that by stat. 43 Geo. 3, c. 99, where any person shall quit his or her place of residence and remove to any other parish or place without first discharging or paying the duties charged upon him or her, the commissioners acting within the parish or place where such duties are charged upon and unpaid by the person removing as aforesaid, are directed to sign and cause to be transmitted a certificate thereof to the commissioners acting within the parish or place where the person making such default of payment shall happen to reside, which commissioners, or any two or more of them, are thereby directed and empowered to raise and levy the said duties charged upon the party removed as aforesaid: and whereas it frequently happens that no sufficient distress can be found within the district or division of the said last-mentioned commissioners whereby the said duties may be levied, and it is expedient to provide a further remedy for the recovery of the said duties in such cases: be it therefore enacted, that where, upon the transmission of any such certificate as aforesaid, no sufficient distress can be found within the district or division of the commissioners acting for the parish or place within which the person removed shall happen to reside, whereby the said duties may be levied, then and in every such case, any two or more of such last-mentioned commissioners are hereby authorised and required, by warrant under their hands and seals, to commit the person so making a default of payment as aforesaid to the common gaol, there to be kept without bail or mainprize until payment shall be made of the said duties and of all reasonable costs and expenses.

5 & 6 Will. 4, c. 20.

Commissioner of the district to which any person shall remove without paying the duties assessed, to commit such person to prison in default of sufficient distress.

Sect. 17. In any case where, under or by virtue of any act or acts in force relating to the duties of assessed taxes, or by or under this act, the commissioners of taxes are authorised to commit any person to prison in default of payment of any of the said duties, it shall be lawful for the said commissioners by their warrant of commitment to direct that any such person shall be detained and kept in prison

Defaulters committed to prison to be liable to the payment of the expenses of their commitment.

of the Parish called the Upper Parish, and one for another called the Lower Parish, and they accordingly collect the taxes separately from the several inhabitants of their respective divisions, in case of a deficiency in the amount of the taxes collected, through the misconduct of either, the whole parish must be re-assessed, and not the particular district the collector of which has misapplied the money, aid from the collection of

whose taxes the deficiency arises; although the taxes of the other division have been collected and paid over to the receiver-general, the appointment being held by the court to be considered as one appointment of two for the parish, which would be valid under the act, and not of one for each subdivision, which would be invalid. (*Ex parte the Inhabitants of the Parish of Henllan, Denbighshire, 7 Price, 594.*)



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5 & 6 Wm. 4, c. 20.

Commissioners, by direction of the treasury or the commissioners of stamps and taxes, may release prisoners committed for non-payment of duties or penalties.

until payment shall be made as well of the said duties as of such further sum as the said commissioners shall adjudge to be reasonable for the costs and expenses of apprehending such person and of conveying him or her to prison; and every such person shall be detained and kept in prison, according to the tenor and effect of such warrant.

Sect. 18. Where, under or by virtue of any act or acts in force, any person hath been or shall be committed to prison by or under any warrant of the commissioners of taxes acting within or for any district or division, for or by reason of his or her neglect or omission to pay any duties which may have been assessed or charged upon him or her, or any penalty incurred by him or her under any act or acts in force relating to the land or assessed taxes, and he or she is or shall be detained in custody solely under the authority of any such warrant as aforesaid, it shall be lawful for the same commissioners, or for any two or more of the commissioners acting within or for the same district or division, and they are hereby fully authorised and required, at the request or by the direction of the commissioners of his majesty's treasury, or the commissioners of stamps and taxes for the time being, signified in writing, signed by the secretary or one of the secretaries of the said respective commissioners last mentioned, to issue their warrant to the gaoler or keeper of any gaol or prison in which any such person may be detained, for the liberation of such prisoner; and upon the receipt of such last-mentioned warrant, such gaoler or keeper shall forthwith release and discharge out of custody such prisoner, if for no other cause than as aforesaid he or she shall be detained.

8. COLLECTORS PAYING OVER MONEY, LIABILITY OF PARISHES FOR DEFAULT, AND PROCEEDINGS THEREUPON (a).

Collectors to pay\* the amount of the duties to the receiver-general or his deputy.

Notice of appointment of deputies to be given to commissioners.

Receiver-general to give receipts to collectors, gratis.

Receiver-general to hasten collectors to make payments, and in default to cause the same to be levied by warrant of the commissioners upon the collector's goods.

By 43 Geo. 3, c. 99, s. 48, that all monies of the duties herein mentioned, to be assessed under the regulations of this act, shall, at such times as shall be appointed for the payment thereof, be paid by the particular collectors who shall collect the same unto the receiver-general now or for the time being appointed by his majesty, his heirs or successors, or by the lord high treasurer for the time being, or the commissioners of the treasury for the time being, or any three or more of them, to receive the same, or the deputy or deputies of such receiver-general, to be appointed under his hand and seal, and whom he is hereby authorised to appoint, and for whom he shall be answerable, whereof notice shall be given by the receiver-general unto the commissioners, or any two or more of them, within their respective districts, within twenty days after the first meeting, yearly, and so from time to time, within twenty days after every death or removal of any deputy, whenever any such shall happen; and the said receiver-general, his deputy or deputies, shall give receipts *gratis* to the said collectors for all monies by them received in pursuance of such act or acts; and the receipt of such receiver-general, his deputy or deputies, or any of them, shall be a sufficient discharge unto every such collector.

Sect. 49. That the receivers-general, their deputy or deputies, are hereby empowered and required to call upon and hasten the collectors to make the payments of all sums received by them of such duties as aforesaid, and in default of such payment, to cause the same to be levied by warrant under the hands and seals of any two or more of such commissioners, upon the collectors, by distress and sale of his or their goods and chattels, such sum and sums of money as he or they hath

(a) See *ante*, notes to sects. 41 and 47 of 43 Geo. 3, c. 99:

or have received, and as ought by him or them to have been paid, and is not paid.

Sect. 50. That the particular collectors for payment of any sums by them received, unto such receiver-general or his deputy, shall not be obliged to travel above ten miles from the place of their habitations.

And see the sections 39, 40, 41, *ante*, pp. 806, 807; sections 43, 44, 45, *infra*.

Sect. 51. That no collector or collectors of any of the duties herein mentioned shall collect or gather the same by any rate or book, other than such rate and book as shall be signed and allowed by such commissioners as aforesaid, or any two or more of them; and that in case any such collector or collectors shall collect the same by any other rate or book, or shall receive such duties from any person or persons not charged therewith, or shall collect from any person or persons more money than is actually charged in such rate or book, and not pay the whole money by him collected, or fraudulently alter any such rate or book, after the same hath been signed and allowed by such commissioners as aforesaid, every such collector or collectors shall for every such offence forfeit the sum of 100*l*.

Sect. 52. That if any such collector or collectors shall neglect or refuse to pay any sum or sums of money which shall be by him or them received as aforesaid, as in and by this act is directed, and shall detain in his or their hands any money received by them or any of them, and not pay the same at such time as by this act is directed, or shall have wilfully refused to give an account to such commissioners as aforesaid, of the sums by him or them collected in manner before directed, the said respective commissioners, or any two or more of them, in their respective jurisdictions, are hereby authorised and empowered to imprison the person, and seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of such collector or collectors, to him or them belonging, or which shall descend or come into the hands or possession of his or their heirs, executors, or administrators, wheresoever the same can be discovered and found; and such commissioners who shall so seize and secure the estate of any collector or collectors, shall and are hereby empowered to appoint a time for a meeting of the commissioners for such division, city, town, or place, and there to cause public notice to be given of the place where such meeting shall be appointed, ten days at least before such meeting; and the commissioners present at such meeting, or the major part of them, in case the accounts of such collector be not duly delivered, or the monies detained by any such collector or collectors be not paid or satisfied, as ought to be done according to the directions of this act, shall be and are hereby empowered and required to sell and dispose of all such estates which shall be for the cause aforesaid seized and secured, or any part of them, to satisfy and pay into the hands of the receiver-general the sum that shall not be so accounted for, or shall be so detained in the hands of such collector or collectors, their heirs, executors, or administrators respectively, together with the reasonable costs and charges of recovering, raising, and paying the same; which costs and charges shall be ascertained and settled by the said commissioners, and the overplus (if any) shall be restored to the person who owned the estate before the sale thereof.

Sect. 43. That if any collector to be appointed as aforesaid, shall neglect or refuse to demand payment of all sums of money given in charge to such collector of the respective persons chargeable therewith, or leave a demand in writing at their respective places of last abode, or on the premises, charged with the assessment, as the case may require, within the time herein limited; or in case of default of payment thereof upon such demand, shall neglect or refuse to execute the warrant or precept of the commissioners for recovering the same,

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Collector not obliged to travel above ten miles to make his payments to the receiver-general.

Collector gathering by a false book, or receiving more than is charged in the rate, or fraudulently altering any rate, to forfeit 100*l*.

If collectors refuse to pay the duties received by them, or to deliver their accounts, the commissioners may imprison them, and seize their estate and effects.

Commissioners seizing collector's estate, &c., to appoint a meeting, giving ten days' notice thereof.

Commissioners at such meeting to sell the collector's estates and effects, to satisfy the debt due from him, with costs and charges.

If collectors do not demand duties of the parties charged, and execute the warrants of the commissioners within a limited time, the names of such persons cannot be return-

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ed into the exchequer, but the parish must be answerable for the same.

Collectors not to insert in any schedule to be returned into the exchequer, any person as a defaulter, unless upon oath as to certain particulars.

Collectors to make a return upon oath of persons from whom the duties cannot be collected.

Commissioners after examination on oath of collector, shall make out schedules of sums discharged from assessments, and sums with which defaulters ought to be charged, and sums which ought to be re-assessed upon the parish, and deliver the same to the receiver-general to be returned into the exchequer, that process may issue. In default of such schedule, the re-

within two calendar months after the said duties are payable, as by this act is directed, it shall not be lawful for such collector to insert in the schedule to be by the receiver-general returned into the exchequer, the name of such person as having made default of payment of any of the sums rated or assessed on such person, but the parish, ward, or place respectively, for which such collector shall have been appointed, shall be answerable for the same, in the manner directed by any act or acts for granting the said duties herein mentioned. (See *ante*, 17 & 18 Vict. c. 85, s. 5.)

Sect. 44. That no collector appointed for any parish, ward, or place, shall be allowed to insert in any schedule the name of any person to be returned into the exchequer as not having paid the duties made payable by any act or acts herein mentioned, unless such collector shall make oath, or, being one of the people called Quakers, shall make and subscribe a solemn affirmation before two commissioners (who respectively shall certify the said oath or affirmation on the said schedule), that the sum for which such person is so returned in default, is due and wholly unpaid, either to such collector, or to any other person or persons for such collector, to the best of his knowledge and belief, and that such person became insolvent or bankrupt before the day on which the duties became payable, and had not goods and chattels sufficient whereon to raise and levy such duties within the parish, ward, or place, for which such collector shall have been appointed at any time since such duties became payable, or that such person removed from the parish, ward, or place for which such collector shall have been appointed before the day on which such duties became payable, without leaving therein sufficient goods and chattels, whereon such duties then payable could be raised and levied, and that there were not, nor are, any goods and chattels of any person or persons liable to the payment of such duties in arrear, or any part thereof, whereby the same, or any part thereof, could or might be raised or levied, which oath or affirmation shall be endorsed on such schedule.

Sect. 45. That the collectors appointed as aforesaid shall make a due return fairly written on paper, under their hands, to such commissioners, containing the names, surnames, and places of abode of every person within their respective collections, from whom such collector or collectors shall not have been able to collect or receive such duties for any of the causes before mentioned, and which shall have been duly verified on the oath of such collector as aforesaid, and the particular reason for returning each defaulter, and the sum and sums charged upon every such person; and such commissioners, after due examination thereof on the oaths or affirmations as aforesaid of the collectors, shall ascertain the sums which, according to the provisions of any of the said acts herein mentioned, shall have been discharged from assessment for any cause therein specially allowed; and the said commissioners shall also make out their schedules containing the sums so discharged, and the sums with which each and every such defaulter ought to be charged, and the sums which shall not have been collected by occasion of the collector's neglect, and which ought to be re-assessed on the parish, ward, or place as aforesaid, and shall cause the said several particulars to be inserted in a schedule fairly written on parchment, under the hands and seals of such commissioners, or any two or more of them, containing the names and surnames of the said collectors, and the same to be delivered to the receiver-general, to be returned by such receiver-general into his majesty's said Court of Exchequer, whereupon every person so making default of payment, and each parish, ward, or place, so in default, may be charged by process of court according to the course thereof in that behalf; and, in default of such schedule made out according to the directions of this act, it shall be lawful for the receiver-general,

and he is hereby required, to return every such parish, ward, or place *insuper*, for all sums not paid to the receiver-general, and contained in the duplicate of assessment to him delivered, and all such sums so returned shall in such case be re-assessed on such parish, ward, or place; and all and every the proper officers therein concerned shall, and they are hereby required, to take care, from time to time, that such process be duly issued and made effectual, so that all such sums as shall be in arrear and unpaid as aforesaid, may be speedily recovered and paid into his majesty's exchequer; and if any such collector shall neglect or refuse to make such return in manner before directed, every such collector shall forfeit the sum of 100*l*.

1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.  
ceiver-general  
to return the  
parish *insuper*.

Collector neglecting to make returns, to forfeit 100*l*.

3 Geo. 4, c. 88, s. 3, enacts, That if any collector or collectors of the said duties and sums of money aforesaid, or any of them, shall neglect or refuse to pay any sum or sums of money which shall be by him or them received as aforesaid, as in and by the said several acts, or by this act, is directed, and shall detain, in his or their hands, any money received by him or them, and not pay or account for the same in manner directed by the said acts or this act, the commissioners acting in the execution of the acts relating to the said duties, or any two or more of them, in their respective districts, are hereby authorised and empowered to imprison the person, and seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of such collector or collectors, to him or them belonging, or which shall have descended or come into the hands or possession of his or their heirs, executors, administrators, or assigns, wheresoever the same can be discovered and found; and the said commissioners who shall so seize and secure the estate of any collector or collectors, or any two or more of the commissioners acting as aforesaid in the same district, shall and are hereby empowered to appoint a time for a meeting of the commissioners for such division, city, town, or place, and then to cause public notice to be given of the place where such meeting shall be appointed, ten days at least before such meeting; and the commissioners of such division, city, town, or place, present at such meeting, or the major part of them, in case the accounts of such collector be not duly delivered, or the monies detained by any such collector or collectors be not paid or satisfied, as ought to be done, according to the directions of the said acts or of this act, shall be and are hereby empowered and required to sell and dispose of all such estates which shall be for the cause aforesaid, seized and secured, or any part of them, to satisfy and pay into the hands of the receiver-general the sum that shall not be so accounted for, or shall be so detained in the hands of such collector or collectors, their heirs, executors, or administrators respectively, together with the reasonable costs and charges of recovering, raising, and paying the same, which costs and charges shall be ascertained and settled by the said commissioners, and the overplus (if any) shall be restored to the collector or collectors, or the person or persons entitled thereto.

3 Geo. 4, c. 88.  
Commissioners empowered to seize and sell estates of collectors making default.

Notice of meeting for that purpose.

Proceeds of sale, how disposed of.

Sect. 4. That any two or more of the commissioners acting for the division in which the estate and effects of such collector or collectors shall be seized and secured as aforesaid, shall be and are hereby authorised and required to make conveyance of all such freehold and copyhold estates respectively; and in like manner to assign the leasehold and other personal estate of such collector, and all his right, title, and interest therein, at the time of such seizure, or at the time of the death of any collector so dying in default as aforesaid, to the respective purchasers thereof respectively, by deed indented between any two or more of the said commissioners; and such sales and purchases respectively shall be as effectual and valid, to all intents and purposes, against such collector, his heirs, executors, and administrators, and all persons claiming under such collector, in like manner as the sale of

Commissioners may convey estates so sold.

1. *The Acts relating to Management of Commissioners.*

3 Geo. 4, c. 88.

Purchasers of copyholds to compound with lords of manors for fines, &c.

bankrupts' estates of the like nature, under and by virtue of the statute relating to bankrupts, or any of them, may be made by deed indented or enrolled, or by deed of assignment, according to the several natures of such last-mentioned estates: provided always, that such person or persons to whom any such sale of copyhold lands shall be made, shall in like manner as the purchaser of the copyhold estates of bankrupts, before such time as he or they, or any of them, shall enter or take any profit of the said lands or tenements, agree and compound with the lords of the manors of whom the same shall be holden, for such fines or incomes as heretofore hath been most usual and accustomed to be yielded or paid therefor; and that, upon every such agreement or composition, the said lords for the time being, at the next court to be holden at or for the said manors, shall not only grant to the said vendee or vendees, upon request, the same copyhold or customary lands or tenements by copy of court-roll of the same manors, for such estate or interest as to them shall be so sold, and reserving the ancient rents, customs, and services, but also in the same court admit them tenants of the same copyhold or customary lands as other copyholders of the same manors have been wont to be admitted, and to receive their fealty, suit, or service, according to the custom of the court of such manor.

5 & 6 Wm. 4, c. 20.

In cases where any county, &c., or person may be returned *insuper* for arrear of land or assessed taxes, the commissioners of stamps and taxes may transmit a certificate thereof to the king's remembrancer, which shall be enrolled in his office, and be the ground for process.

By stat. 5 & 6 Will. 4, c. 20, s. 11, so much of any act or acts as prohibits the setting *insuper* or charging any county, division, parish, ward, or place, or any person or persons, unless the account of the receiver shall be declared and passed in the exchequer within two years after the end of the year for which the rates or duties shall be payable, shall be and the same is hereby repealed; and that in any case in which by any act or acts now in force the receiver-general, receiving inspector, or other receiver of the land or assessed taxes in England is directed or authorised to set *insuper* or charge any county, division, parish, ward, or place, or any person or persons, for any sum or sums of money in arrear or unpaid, it shall be lawful for the commissioners of stamps and taxes, from time to time whenever they shall deem it expedient for the public service so to do, and although the period so limited by any such act or acts as aforesaid may have expired, to transmit to his majesty's remembrancer of the Court of Exchequer a certificate of all or any such sum or sums which may be now in arrear, or which at any time hereafter may become in arrear and be unpaid; and every such certificate shall be signed by two or more of the said commissioners, and shall contain the name or names of every or any such county, division, parish, ward, or place, and of such person or persons as aforesaid, and the total amount of the sum or sums in arrear or unpaid, and with which such county, division, parish, ward, or place, or such person or persons, is or are chargeable, and shall specify whether the same shall be due or owing in respect of the land-tax or of the assessed taxes, and where there shall be arrears of both the said duties, distinguishing the amount due or owing in respect of each; and the said remembrancer, upon the receipt of any such certificate, shall cause the same to be inrolled in his office, and such inrolment shall be and be deemed a record in his office as valid and effectual to authorise the issuing of any process or processes in the law against the county, division, parish, ward, or place, and the person or persons, so rendered chargeable, and to and for all other intents, constructions, and purposes whatsoever, as if such county, division, parish, ward, or place, or person or persons, had been actually returned *insuper* in any declared account duly inrolled as of record in the office of the said remembrancer.

Sect. 13. And whereas by 43 Geo. 3, c. 99 (a), intituled "An Act

(a) Arrears of assessed taxes cannot be recovered by information in the nature of a popular action of debt, under the 43 Geo. 3, c. 99, s. 45, and

for consolidating certain of the Provisions contained in any Act or Acts relating to the Duties under the Management of the Commissioners for the Affairs of Taxes, and for amending the same," it is enacted, that the commissioners of taxes shall make out their schedules containing the sums discharged from assessment for any cause specially allowed by law, and the sums with which each and every defaulter ought to be charged, and the sums which shall not have been collected by occasion of the collector's neglect, and which ought to be re-assessed on the parish, ward, or place, and shall cause the said several particulars to be inserted in a schedule fairly written on parchment under the hands and seals of such commissioners, or any two or more of them, containing the names and surnames of the said collectors, and the same to be delivered to the receiver-general, to be returned by such receiver-general into his majesty's Court of Exchequer, whereupon every person so making default of payment, and each parish, ward, or place so in default, may be charged by process of court according to the course thereof in that behalf: and whereas it is expedient that such schedules as aforesaid should be deposited and remain with the said commissioners of stamps and taxes at their head office; be it therefore enacted, that all such schedules as aforesaid which shall be made out at any time after the commencement of this act shall be delivered over or transmitted by the receiver-general, receiving inspector, or other receiver to whom the same shall have been delivered, to the commissioners of stamps and taxes, and shall be deposited and remain in the head office of the said last-mentioned commissioners; and the production of any schedule so deposited and purporting to contain the name or names of any such defaulter or defaulters as aforesaid shall be conclusive evidence against any person named therein as making default of payment, and against every parish, ward, or place named therein as in default, of the sum or sums mentioned in any such schedule being due and owing and in arrear and unpaid to his majesty, his heirs and successors, unless payment thereof shall be proved; and every such sum shall be recoverable from the person and persons making default of payment thereof as a debt upon record to the king's majesty, his heirs and successors, with full costs of suit, and all charges attending the same.

1. *The Acts relating to Management of Commissioners.*

5 & 6 Wm. 4, c. 29.

Parchment schedules of defaulters to be deposited with the commissioners of stamps and taxes.

Sect. 14. So much and such part and parts of any act or acts in force as require the commissioners for the affairs of taxes to transmit to the king's remembrancer in England the parchment duplicates of assessments of the land-tax or assessed taxes, shall be and the same are hereby repealed: provided always, that such duplicates shall continue to be furnished and transmitted to the commissioners of stamps and taxes in the manner directed and required by the laws in force, and the same shall remain deposited in the head office of the said commissioners."

Parchment duplicates of assessments not to be transmitted to the king's remembrancer.

By 1 Vict. c. 61, s. 3, reciting, "that by 43 Geo. 3, c. 161, s. 23, 1 Vict. c. 61, s. 3. for repealing the several duties under the new management of the commissioners for the affairs of taxes, and granting new duties in lieu thereof, and for other purposes therein mentioned, the respective commissioners of the duties of assessed taxes are thereby required, as soon as the assessment of the said duties shall be made, to issue out and deliver to the respective collectors their warrants for the speedy and effectual levying and collecting the said duties as the same shall become payable as therein mentioned; and it is thereby enacted, that such

this 13th section of 5 & 6 Will. 4, c. 20, because of the words in the 13th section, which provides that the amount "shall be recovered from the person and persons making default of payment thereof, as a debt upon record

to the king's majesty." The proceedings ought to be by *scire facias* or *extent*, or information upon the record itself. (*Attorney-General v. Sewell*, 4 M. & W. 77; 6 Dowl. P. C. 673; 8 C. & P. 376.)

*1. The Acts  
relating to Ma-  
nagement of  
Commissioners.*

1 Vict. c. 61, s. 3.

part thereof as cannot be so levied and collected may be recoverable as a debt upon record to the king's majesty, his heirs, and successors, with full costs of suit, and all charges attending the same: and that by 43 Geo. 3, c. 99, s. 45, 'An Act for consolidating certain of the Provisions contained in any Act or Acts relating to the Duties under the Management of the Commissioners for the Affairs of Taxes, and for amending the same,' it is enacted, 'that the commissioners of taxes shall make out their schedules, containing the sums discharged from assessment for any cause specially allowed by law, and the sums with which each and every defaulter ought to be charged, and the sums which shall not have been collected by occasion of the collector's neglect, and which ought to be re-assessed on the parish, ward, or place, and shall cause the said several particulars to be inserted in a schedule fairly written on parchment, under the hands and seals of such commissioners, or any two or more of them, containing the names and surnames of the said collectors, and the same to be delivered to the receiver-general, to be returned by such receiver-general into his majesty's Court of Exchequer, whereupon every person so making default of payment, and each parish, ward, or place so in default, may be charged by process of court, according to the course thereof in that behalf:' and that by 5 & 6 Will. 4, c. 20, s. 13, 'An Act to consolidate certain Offices in the Collection of the Revenues of Stamps and Taxes, and to amend the laws relating thereto,' it is enacted, 'that all such schedules as aforesaid, which shall be made out at any time after the commencement of the said act, shall be delivered over or transmitted by the receiver-general, receiving inspector, or other receiver to whom the same shall have been delivered, to the commissioners of stamps and taxes, and shall be deposited and remain in the head office of the said last-mentioned commissioners; and that the production of any schedule so deposited, and purporting to contain the name or names of any such defaulter or defaulters as aforesaid, shall be conclusive evidence against any person named therein as making default of payment, and against every parish, ward, or place named therein, as in default of the sum or sums mentioned in any such schedule being due and owing and in arrear and unpaid to his majesty, his heirs, and successors, unless payment thereof shall be proved; and that every such sum shall be recoverable from the person and persons making default of payment thereof as a debt upon record to the king's majesty, his heirs, and successors, with full costs of suit, and all charges attending the same:' and that doubts have arisen as to the construction of the said acts, and it is expedient to amend the same, it is enacted, That all and every the said duties of assessed taxes contained, charged, or assessed in or by any assessment already made, or to be at any time hereafter made, may be sued or prosecuted for and recovered, with full costs of suit and all charges attending the same, of and from the person and persons respectively charged therewith, in her majesty's Court of Exchequer at Westminster, by information in the name of her majesty's attorney-general, as a debt or debts due to the queen's majesty, her heirs and successors, or by any other ways or means whereby any debt of record or otherwise due to the queen's majesty, her heirs or successors, can or may at any time be sued or prosecuted for or recovered, as well as by the summary means specially provided by the said acts or any of them for levying the said duties; and in any proceeding for the recovery of any of the said duties, the production of any schedule made or purporting to be made in pursuance of the 43 Geo. 3, and purporting to contain the name or names of any such defaulter or defaulters as aforesaid, shall be sufficient evidence of the sum or sums mentioned in any such schedule having been duly charged and assessed upon such defaulter or defaulters respectively, and of the same being due and owing, and in arrear and unpaid, to her majesty, her heirs and successors."

For removing doubts as to mode of proceeding against defaulters for recovery of arrears of taxes.

9. PROVISIONS FOR ENFORCING THE ACT.—PENALTIES,  
PROTECTION TO OFFICERS, &c.

43 Geo. 3, c. 99, s. 59. That all constables, headboroughs, tithingmen, and other his majesty's officers, shall, and are hereby required and enjoined to be respectively aiding and assisting in the execution of this act, and of every act or acts for granting duties to be assessed under the regulations of this act, and to obey and execute such precepts and warrants as shall be to them directed in that behalf by the respective commissioners hereby appointed, or any two or more of them.

Sect. 60. That if any person or persons shall, at any time hereafter, wilfully obstruct any assessor or assessors, collector or collectors, surveyor or surveyors, inspector or inspectors, in the due execution of his or their said office or offices, duty or duties respectively, such person or persons shall, for every such offence, forfeit the sum of 50*l*.

Sect. 61. That the said receivers-general, their deputy and deputies, surveyors, inspectors, and all other officers and persons who shall be employed in the execution of this act, or any act or acts for granting duties to be assessed under the regulations of this act, shall observe and follow such orders, instructions, and directions, as they shall from time to time receive from the said commissioners of the treasury, or any three or more of them, now or for the time being, or the high treasurer for the time being.—And see sects. 67, 68, *post*, p. 820.

Sect. 62. Provides for the application of penalties sued for within twelve months (*a*).

Sect. 63. Relates to the recovery and application of penalties not sued for within twelve months, and provides that all penalties and forfeitures, and shares of penalties and forfeitures incurred as aforesaid, belonging to his majesty, his heirs and successors, shall be paid into the hands of the proper receiver-general or his deputy, to the use of his majesty (*a*).

Sect. 64. That all such pecuniary penalties not exceeding 20*l*. imposed by this act, or any act or acts for granting duties to be assessed under the regulations of this act, may be recoverable before two or more commissioners for executing this act; and also such of the penalties exceeding 20*l*. as are directed to be added to the assessment of the duties in any parish, ward, or place in the district where the offence shall be committed; and such commissioners shall take cognizance of such offence upon information or complaint in writing made to them, and upon a summons to the party accused to appear before the said commissioners at such time and place as they shall fix, or without such summons, in case the party or parties shall have been surcharged before the said commissioners, and shall have appealed against the same, and shall appear upon such appeal before the said commissioners; and such commissioners shall examine into the matter of fact, and proceed to hear and determine the same in a summary way; and, upon proof made thereof, either by voluntary confession of the party accused, or by the oath or solemn affirmation of one or more credible witness or witnesses, or otherwise, as the case may require, to give judgment for the penalty, or for such part thereof to which part thereof the said commissioners shall think proper to mitigate the same, not being in any case less than one moiety of such penalties, and to assess the same upon the party, and charge the same in the assessment to which the penalty adjudged shall particularly relate, and in addition to the duty, in case the party shall be charged therewith, and which penalties so adjudged shall be levied in like manner as the said duties (*b*), and the said adjudication of the commissioners shall be final and conclusive to all intents and purposes, without power of appealing from the same; and

1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.

Constables, &c. to be aiding, &c. in the execution of this act.

Persons obstructing officers to forfeit 50*l*.

Officers to follow instructions, &c. of commissioners of the treasury.

Penalties not exceeding 20*l*. to be recoverable before two commissioners, and also penalties exceeding 20*l*. if directed to be added to the assessments.

Commissioners may mitigate penalties to one moiety.

(*a*) These sections have since been varied by 31 & 32 Vict. c. 124. See *post*, p. 822.

(*b*) See *post*, 31 & 32 Vict. c. 124, p. 822.



1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.

Proceedings of commissioners not to be subject to revision except where cases have been demanded, upon a surcharge, for the opinion of the judges.

Persons giving false evidence before commissioners, liable to the punishments for perjury.

\* *Sic in act.*

Indictments for perjury, where to be tried.

Books of assessments and all other books and papers relative to the duties to be the property of the commissioners of districts for the time being, and in succession.

Persons having any books or papers relating to the duties, to deliver same to persons appointed by commissioners of taxes, under penalty of 50*l*.

Persons receiving same to deliver them to such of the commissioners for executing this act as the commissioners of taxes shall direct.

the proceedings of the commissioners shall not be removable by any process whatever into any court of law or equity, or be subject to revision, except in such cases where a surcharge shall be made, and a case shall be demanded and stated for the opinion of one of the justices or barons of the superior courts, conformably to the directions contained in any act or acts, granting the duties to which such surcharges shall relate.

Sect. 65. That if any person or persons upon any examination on oath or affirmation shall wilfully give false evidence, or make any false oath or affirmation or affidavit, or shall wilfully and corruptly swear or affirm any matter or thing which shall be false or untrue, before the commissioners for executing this act, or any of them, touching any matter or thing within the intent and meaning of this act, or any act or acts for granting duties to be assessed under the regulations of this act,\* shall be prosecuted for the same; every such person or persons being convicted thereof shall be subject and liable to the same punishment and disqualifications as persons are subject and liable to for wilful and corrupt perjury, by the laws and statutes of the realm of England.

Sect. 66. That any indictment or information for perjury committed in any such examination, affidavit, or deposition whereon the same shall be made, shall and may be laid, tried, and determined in the county where the same shall be exhibited to the commissioners in pursuance of this act, or the said act or acts before mentioned.

Sect. 67. That all and every the duplicates of the several books of assessments which have been or shall be made and delivered by the respective assessors of the said several duties, to the commissioners in any division or place, or to their respective clerks for the time being, and which are or shall be in the custody, keeping or possession of such commissioners or clerks respectively, and all minute-books, and other public books and papers relating to the said several duties, in the custody, keeping, or possession of any such clerk or clerks, who hath or have been, or shall be removed from such office or offices, or in the custody, keeping, or possession of the executors, administrators, or other legal representatives of any person or persons who hath or have died, or shall die during his or their holding such office or offices, or after his or their removal from the same, or in the custody, keeping, or possession of his or their respective agent or attorney, or of any other person or persons soever, shall be deemed, and are hereby declared to be the property of the commissioners of the said several duties, acting in the respective divisions or places, for the time being, and in succession, as records of and belonging to them the said commissioners, for their use and inspection, and shall be placed and deposited with and remain in the custody, keeping, and possession of them the said commissioners, or their respective clerks for the time being, or such other person as the said commissioners, or any two or more of them, for the time being, shall from time to time at their meetings order, direct, or appoint.

Sect. 68. That all and every person and persons whatever, now or at any time hereafter having in his or their custody, keeping, or possession, any such books or papers aforesaid, relating to the said several duties in this act mentioned, shall, within the space of one calendar month next after notice in writing, signed by three or more of the commissioners for the affairs of taxes (a true copy thereof being given to or left at the usual place of abode of such person or persons), deliver and give up all such books and papers unto such person or persons as the said commissioners for the affairs of taxes by such notice shall order and appoint, whose receipt of the same shall be a good and sufficient discharge to such person or persons so delivering such books and papers; and if any such person or persons now or at any time hereafter having in his or their custody, keeping, or possession, any such books or papers, shall refuse or neglect to deliver the same within the time limited by such notice, and demand made, he or they shall for every such offence forfeit and pay the sum of 50*l*.; and all such books and

papers shall be delivered by the person or persons so appointed to such of the commissioners for executing this act, as the said commissioners for the affairs of taxes shall think proper, for the effectual and speedy execution of the powers by this act granted.

Sect. 69. That no such commissioner or commissioners, who shall be employed in the execution of this act, or any act or acts for granting duties to be assessed under the regulation of this act, shall be liable for or by reason of such execution, to any of the penalties mentioned in 25 Car. 2, for preventing of dangers which may happen from popish recusants.

Sect. 70. That if any action or suit shall be brought against any person or persons for anything done in pursuance of this act, or any act for granting duties to be assessed under the regulations of this act, such action or suit shall be commenced within six calendar months next after the fact committed, and not afterwards, and shall be laid in the county or place where the cause of complaint did arise, and not elsewhere; and no writ or process shall be sued out for the commencement of such action or suit, until one calendar month next after notice in writing shall have been delivered to, or left at the usual place of abode of such person or persons, by the attorney or agent for the intended plaintiff or plaintiffs, in which notice shall be clearly and completely contained the cause and causes of action, the name and place or places of abode of the intended plaintiff or plaintiffs, and of his or their attorney or agent, and no evidence shall be given on the trial of such action or suit of any cause or causes of action, than such as is or are contained in such notice; and the intended defendant or defendants to whom such notice shall have been delivered, may at any time before the expiration of such calendar month tender amends to the intended plaintiff or plaintiffs, his or their attorney or agent, and in case such amends are not accepted, may plead such tender in bar to any action or suit, to be brought against him or them, grounded on such notice, writ, or process; and the defendant or defendants in every such action or suit may plead the general issue, and also such tender, and any other plea, with leave of the court, in bar of such action or suit, and may give this act and the special matter in evidence at any trial to be had thereupon; and if the jury shall find for the defendant in any such action or suit, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his or their action or suit after the defendant or defendants shall have appeared, and if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and have the like remedy for the same as any defendant hath in any other case to recover costs by law; and every such action or suit which shall be brought against any collector or collectors appointed under this act shall be defended by the commissioners acting for the division or place where such collector shall have been appointed, and the costs and charges attending the same, as also any other action or suit to be brought by or against commissioners or collectors in pursuance of this act, or for anything done in pursuance of this act, or any act for granting duties to be assessed under the regulations of this act, shall be defrayed by an assessment made on the parish or place for which such collector or collectors shall

1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.

Commissioners executing this act not liable to penalties in the 25 Car. 2, c. 2, s. 69.

Limitation of actions.

One month's notice of action to be given to the party by the attorney for the plaintiff, containing certain particulars (a).

Defendant may tender amends, which, if not accepted, may be pleaded in bar of action.

Defendant may plead the general issue.

Defendant to have treble costs.

Actions brought against collectors to be defended by the commissioners of the district, and the costs and charges attending the same, and also any other actions to be brought by or against com-

(a) In *Umphelby v. M'Lean*, 1 B. & A. 42, assumpsit for money had and received brought to recover the amount of an excessive charge made by the defendants as collectors, on a distress for arrears of taxes: held, that the defendants were not entitled to a month's notice before action brought, under the 43 Geo. 3, c. 99, s. 70, which provides, that no writ or process shall

be sued out for anything done in pursuance of that act till after one month's notice; for the action was not in respect of any act done in execution of the office of tax collector, but for the neglect to pay over money which he ought never to have taken. See 4 B. & C. 200, *semble contra*: *O'Reilly v. Lawton*, 2 Jebb & Symes; and further title, "Justices of the Peace."

1. *The Acts relating to Management of Commissioners.*

43 Geo. 3, c. 99.  
 Commissioners or collectors, to be defrayed by an assessment on the parish.  
 31 & 32 Vict. c. 124.  
 Penalties under inland revenue acts to belong to her majesty.

Expenses of prosecutions to be paid out of supplies provided by parliament.

have been appointed, in a just proportion to the amount of the duties payable under this act, on the respective persons charged to the same in the assessment to be made next after the time when the said costs and charges shall have been incurred.

By 31 & 32 Vict. c. 124, which amends the laws relating to the inland revenue, it is enacted,

Sect. 1. That all fines, penalties, and forfeitures incurred under any act relating to the inland revenue, and recovered after the 1st October 1868, shall go and be applied to the use of her majesty, her heirs or successors, anything in any act to the contrary, notwithstanding. And all such fines and penalties, and all such forfeitures or the proceeds thereof, and all costs, charges, and expenses payable in respect thereof, or in relation thereto respectively, shall without any deduction therefrom be paid to the commissioners of inland revenue or to such officer or person as the said commissioners shall appoint to receive the same.

Sect. 2. All costs, charges, and expenses attending proceedings for recovery of penalties and forfeitures incurred under any act relating to the inland revenue, and all sums of money allowed as rewards shall be deemed to be charges of collection and management, and shall be paid by the commissioners of inland revenue out of such aids or supplies as may be from time to time provided and appropriated by parliament for the purpose.

43 Geo. 3, c. 99.

SCHEDULE (A.)

The Form of the Oath required to be taken by Commissioners before they act in the Execution of this Act.

*I, A. B., do swear that I will truly, faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and authorities reposed in me as a commissioner, by an act passed in the forty-third year of the reign of King George the Third, intituled "An Act" [here insert the title of this act], or by any other act or acts, granting to his Majesty any duties to be assessed under the regulations of the said act; and that I will judge and determine upon all appeals, and all other matters and things, which shall be brought before me as a commissioner under the said acts, or any of them, without favour or affection.*

*So help me God.*

SCHEDULE (B.)

The Form of the Oath or Affirmation required to be taken by Assessors before they act in Execution of this Act.

*I, A. B., do swear [or affirm, as the case may require], that I will diligently execute the office of an assessor, to which I am appointed by authority of an act passed in the forty-third year of the reign of King George the Third, intituled "An Act" [here insert the title of this act]; and that, in the assessment which I am required to make by any other act or acts, granting to his Majesty any duties to be assessed under the regulations of the said act, I will faithfully and honestly act, without favour or affection, according to the best of my skill and knowledge.*

*So help me God.*

FORMS (a).

Forms.

Forms of Information, Summons, and Conviction, against a Collector of Taxes, for Neglect of Duty, on the 43 Geo. 3, c. 99, s. 16; and 3 Geo. 4, c. 88, s. 2; and 3 Geo. 4, c. 23.

(a) The 11 & 12 Vict. c. 43, does not apply to convictions under the statutes relating to the assessed taxes.

## 1. Information.

County of } The information and complaint of A. B., of , in the parish  
 of , in the county of , esq., made on oath before us,  
 E. F. and G. H., esqs., two [or, me, I. K., esq., one, &c., according to the  
 3 Geo. 4, c. 23, s. 2] of the commissioners for executing in the said county  
 the several acts relating to the duties of assessed taxes, appointed to act as such  
 commissioners [or, commissioner, as the case may be] in the district [or as the  
 case may be] of , in the said county, on the day of , in the  
 year of our Lord one thousand eight hundred and ; who says that L. M.,  
 of the parish of , aforesaid [yeoman], being one of the collectors of taxes  
 duly appointed in and for the said parish of , in the said county, from  
 the [fifth] day of [April], one thousand eight hundred and , to the  
 [fifth] day of [April] following, and having taken upon himself the said office,  
 did neglect his duty as said collector; for that he, the said L. M., on, &c. [state  
 the facts complained of, following as nearly as possible the words of the statute  
 which created the offence, and showing such offence], contrary to the statute  
 in that case made and provided; for which offence, and by which neglect of  
 duty, he, the said L. M., hath forfeited a sum not exceeding 20l., to be distrib-  
 uted as the statute directs. Whereupon the said A. B. prays the judgment of  
 us [or, two of], the said commissioners of taxes, in the premises, and that the  
 said L. M. may be summoned to answer the premises before us [or, two of], the  
 said commissioners.

1. The Acts  
 relating to Ma-  
 nagement of  
 Commissioners.

Forms.

1. Information.

Exhibited and sworn before us, E. F. and G. H.

A. B.

[or, me, I. K., as the case may be].

## 2. Summons thereon.

County of } To L. M., of , in the parish of , in the county of .

2. Summons  
thereon.

Whereas information and complaint have been made before me, I. K., esq.,  
 one [or, if before two commissioners, say, us, E. F. and G. H., esqs., two] of  
 the commissioners for executing the several acts relating to the duties of assessed  
 taxes, and appointed to act as such commissioner [or, commissioners, as the case  
 may be] in the district of [or as the case may be], in the said county upon  
 oath by A. B., of , within the parish of , in the county of ,  
 esq., for that you, the said L. M., being one of the collectors of taxes duly  
 appointed in and for the said parish of , from the [fifth] day of  
 [April], one thousand eight hundred and , to the [fifth] day of [April]  
 following, and having taken upon yourself the said office, did neglect your duty  
 as such collector; for which you, the said L. M., on, &c. [here set forth the charge  
 as in the information]; for which offence, and by which neglect of duty, you,  
 the said L. M., forfeited a sum not exceeding 20l., to be distributed as the  
 statute directs: these are to require you, the said L. M., to appear before me,  
 [or us, as the case may be], and such other of the said commissioners for exe-  
 cuting the said acts relating to the duties of assessed taxes as shall be present at  
 , in , in the said county, on the day of next,  
 at the hour of in the [forenoon], to answer to the said information and  
 complaint, and to be further dealt with according to law. Given under my  
 hand [or, our hands, as the case may be], this day of , in the year  
 of our Lord one thousand eight hundred and .

I. K.

## 3. Conviction.

County of } Be it remembered, that on the day of , in the year  
 of our Lord one thousand eight hundred and , at , in  
 the county of , A. B., of , within the parish of , in the  
 county of , esq., personally came before me, I. K., esq., one [if the infor-  
 mation were laid before one commissioner, according to the 3 Geo. 4, c. 23,  
 s. 2, to summon before two, or if laid before two, say us, two] of the commis-  
 sioners for executing in the said county the several acts relating to the duties of  
 assessed taxes, appointed to act as such commissioner [or, commissioners, as the  
 case may be] in the district of [or, as the case may be], in the said county,  
 and exhibited an information on oath before the said commissioner [or us, as  
 the case may be], that L. M., of the aforesaid parish of , [yeoman],  
 being one of the collectors of taxes duly appointed in and for the said parish

3. Conviction  
thereon.

1. *The Acts relating to Management of Commissioners.*

*Forms.*

of \_\_\_\_\_, from the [fifth] day of [April], one thousand eight hundred and \_\_\_\_\_, to the [fifth] day of [April] following, and having taken upon himself the said office, did neglect his duty, for that he, the said L. M. [here set forth the charge as in the information], contrary to the form of the statute in such case made and provided: whereupon the said L. M. after being duly summoned to answer the said charge, appeared before us, E. F. and G. H., esqrs., two of the commissioners for executing the several acts relating to the duties of assessed taxes in the county and district aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_ instant, at \_\_\_\_\_, in the said county, [or, if he neglects to appear, the form must be varied accordingly, see title "Conviction";] and, having heard the charge contained in the said information, declared that he was not guilty of the said offence [or, if he pleads guilty, the form must be varied accordingly, see title "Conviction";] whereupon we, the said commissioners last named, did proceed to examine into the truth of the said charge contained in the said information, and, on the \_\_\_\_\_ day of \_\_\_\_\_, at the parish of \_\_\_\_\_ aforesaid, one credible witness, to wit, N. O., of \_\_\_\_\_, in the said county [labourer], upon his oath, depose and saith to and before us, in the presence and hearing of the said L. M., that within \_\_\_\_\_ months next before the said information was made before the said commissioner [or, commissioners, as the case may be] before named by the said A. B., to wit, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ last, he, the said N. O. [here state the evidence, and, as required by 3 Geo. 4, c. 23, as nearly as possible in the words used by the witness, and if more than one witness be examined, state the evidence given by each; then state that the defendant was called upon for his defence, and state the same, and evidence, if any]. Therefore, it manifestly appearing to us that he, the said L. M., is guilty of the offence charged upon him in the said information, we do hereby convict him of the offence aforesaid, and do declare and adjudge that he, the said L. M., hath forfeited the sum of 20l. of lawful money of Great Britain for the offence aforesaid, but which said penalty we have mitigated to 5l. (a), to be distributed according to the form of the statute in that case made and provided; that is to say, one moiety of the amount of the said penalty to the use of her Majesty, and the other moiety to the said A. B., who informed the said commissioner [or, commissioners] of the said offence, to be paid to the said A. B. by the receiver-general for the said county of \_\_\_\_\_; and we do hereby assess the said sum of [5l.] upon the said L. M., and charge and require the same to be charged in the assessment of the said parish of \_\_\_\_\_, according to the directions of the statute, to be levied in like manner as the duties of assessed taxes; and which adjudication and assessment we do hereby certify to the commissioners of taxes, as the act directs. Given under our hands and seals, at \_\_\_\_\_, in the said county, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

E. F.  
G. H.

See further, acts 1 & 2 Will. 4, c. 18; 4 & 5 Will. 4, c. 60; 5 & 6 Will. 4, c. 20.

9 & 10 Vict. c. 56.

By 9 & 10 Vict. c. 56, "An Act to provide forms of proceedings under the acts relating to the duties of assessed taxes, and the duties on profits arising from property, professions, trades, and offices in England," reciting that by 43 Geo. 3, c. 99, the duties of assessed taxes then under the management of the commissioners for the affairs of taxes, so far as the same related to England, Wales, and Berwick-upon-Tweed, were directed to be assessed, raised, levied, and paid under the regulations of the said act: and that divers acts of parliament have from time to time been passed for explaining, altering, or amending the said recited act and the laws relating to the duties of assessed taxes: and that since the passing of the said first-recited act divers duties of assessed taxes and duties on profits arising from property, professions, trades, and offices have from time to time been granted by parliament, and directed to be assessed, raised, levied, collected, and paid under the rules and regulations of the said first-recited act, and the several other acts relating thereto, or

(a) Note that this penalty is now to be dealt with as provided by 31 & 32 Vict. c. 124. See *ante*, p. 822.

for explaining, altering, or amending the same; and such of the said several duties as are now in force, and payable to her majesty, her heirs and successors, are placed by law under the direction and management of the commissioners of stamps and taxes: and that in and by the said several acts hereinbefore recited, mentioned, or referred to, and other acts relating to the said respective duties, the commissioners and officers acting in the execution of the said acts are required and authorised respectively to make and allow divers assessments, and to make, sign, and issue certain warrants, certificates, notices, and other official documents in the assessing, levying, and collecting of the said duties, and otherwise in relation thereto; and it would tend to promote and facilitate the due and uniform execution of the said acts, if proper forms of proceedings for that purpose were provided and established by law: it is enacted, that from and after the passing of this act, in the assessing, charging, levying, and collecting of the said several duties hereinbefore mentioned, and on all other occasions in the execution of the several acts relating to the matters hereinbefore mentioned, or any of them, in England, it shall be lawful for the respective commissioners, officers, and other persons acting in that behalf to cause their respective assessments, duplicates, charges, warrants, orders, notices, and other proceedings to be drawn, prepared, and made out according to the several forms contained in the schedule hereunto annexed, or to the effect thereof, *mutatis mutandis*, as the case shall require; and every such assessment, duplicate, charge, warrant, order, notice, or other proceeding which shall be so drawn, prepared, or made out, shall be good and effectual to all intents and purposes whatsoever, without stating the case, or the facts, or evidence, in any more particular manner than is required in and by such forms respectively; and no information, summons, conviction, or other preliminary proceeding shall be deemed to be necessary to authorise or justify the making or issuing of any warrant, order, or other proceeding, whereof a form is contained in the said schedule, other than such preliminary proceeding as is recited or mentioned in such form; and the said schedule, and the several forms, rules, and directions therein contained, shall respectively be deemed to be part of this act.

Sect. 2. Provided always, and be it enacted, that no assessment, charge, warrant, or other proceeding which shall be made, or shall purport to be made, by virtue or in pursuance or in execution of the said several acts hereinbefore recited, mentioned, or referred to, or any of them, or of any other act or acts relating to the said several duties hereinbefore mentioned, shall be quashed or deemed to be void or voidable for want of form, or be impeached or affected by reason of any mistake, defect, or omission therein, provided the person or property charged or intended to be charged or affected by any such proceeding be designated therein to common intent and understanding, and such proceeding be in substance and effect in conformity with or according to the intent and meaning of the said acts.

Sect. 3. That wherever the terms and expressions following occur in this act, or in the schedule hereunto annexed, and wherever the same terms and expressions respectively shall occur or be used in any form of proceeding to be drawn, prepared, or made out according to the respective forms contained in the said schedule, the said terms and expressions shall be construed to have the meanings hereinafter assigned to them respectively; (that is to say,) the several expressions, "duties of assessed taxes," and "duties on profits arising from property, professions, trades, and offices," shall respectively mean and include as well the said respective duties as all compositions for the same, and all sums of money which may lawfully be included in or added to any assessment of the said respective duties; the expression "commissioners of assessed taxes" shall be construed and deemed to mean commissioners for putting into execution the several acts

1. *The Acts relating to Management of Commissioners.*

9 & 10 Vict. c. 56.

The forms contained in the schedule to this act to be used in all proceedings under the acts relating to the assessed taxes and the property and income tax.

Proceedings not to be void or voidable for want of form, or affected by any mistake, &c. therein.

Construction of terms in this act or in schedule annexed.

"Duties of assessed taxes," &c.

"Commissioners of assessed taxes."

1. *The Acts relating to Management of Commissioners.*

9 & 10 Vict. c. 56.

"Commissioners of the property and income tax."

"Additional commissioners of the property and income tax."

"Special commissioners of the property and income tax."

"Commissioners for offices."

"Oath."

"England."

"Parish."

relating to the duties of assessed taxes; the expression "commissioners of the property and income tax" shall be construed and deemed to mean commissioners for the general purposes of the act passed in the fifth and sixth years of the reign of her present majesty, intituled "An Act for granting to her Majesty duties on profits arising from property, professions, trades, and offices, until the sixth day of April, 1845:" the expression "additional commissioners of the property and income tax" shall be construed and deemed to mean additional commissioners for executing the powers of the said last-mentioned act; the expression "special commissioners of the property and income tax" shall be construed and deemed to mean commissioners for the special purposes of the said last-mentioned act; the expression "commissioners for offices" shall be construed and deemed to mean commissioners for executing the said last-mentioned act in relation to the duties chargeable under schedule (E.) of the same act, in respect of offices or employments of profit in any court or public department of office, or in any corporate city, borough, town, or place, or in any cinque port; the term "oath" shall mean and include an affirmation in the case of Quakers or other persons entitled by law to make an affirmation in lieu of an oath; the term "England" shall mean and include England, Wales, and Berwick-upon-Tweed; the term "parish" shall mean and include any parish, ward, or place for which a separate assessment of the duties of assessed taxes, or of the duties on profits arising from property, professions, trades, and offices, may lawfully be made, or for which any assessor or collector may be lawfully appointed for the purpose of assessing or collecting the said respective duties; and any word or words importing the singular number or the masculine gender only shall respectively be understood to include several persons, matters, and things, as well as one person, matter, or thing, and females as well as males, unless there be something in the subject or context repugnant to such construction.

The SCHEDULE to which this act refers;

Containing the forms of proceedings for carrying into execution the several acts relating to the duties of assessed taxes, and the duties on profits arising from property, professions, trades, and offices; (that is to say,)

No.

- 1.—Form of Appointment of Assessors.
- 2.—Form of Certificate of Assessments of the Duties of Assessed Taxes, and of the Allowance thereof.
- 3.—Form of Duplicate of First Assessments of the Duties of Assessed Taxes, and Abstract of Contracts of Composition for the said Duties.
- 4.—Form of Collector's Appointment and Warrant to be annexed or subjoined to the foregoing Duplicate.
- 5 to 15 relate to Income Tax.
- 16.—Form of Additional First Assessments of the Duties of Assessed Taxes, and of the Allowance thereof.
- 17.—Form of Duplicate of Additional First Assessments of the Duties of Assessed Taxes.
- 18.—Form of Collector's Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 17.
- 19 to 25 relate to Income Tax.
- 26.—Form of Supplementary Assessments of the Duties of Assessed Taxes, and of the Allowance thereof.
- 27.—Form of Duplicate of Supplementary Assessments of the Duties of Assessed Taxes.

No.

- 28.—Form of Collector's Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 27.
- 29 to 35 relate to Income Tax.
- 36.—Form of Appointment of Assessors for making a Re-assessment of Duties pursuant to the Act 43 Geo. 3, c. 161, s. 56, on the Default or Failure of the Collector.
- 37.—Form of Certificate of Re-assessment under the Act 43 Geo. 3, c. 161, s. 56, and of the Allowance thereof.
- 38.—Form of Duplicate of Re-assessment under the Act 43 Geo. 3, c. 161, s. 56.
- 39.—Form of Collector's Appointment and Warrant to be annexed or subjoined to the foregoing Duplicate of the Re-assessment of Duties, No. 38.
- 40.—Form of Assessor's Appointment for making an Assessment pursuant to the Acts 43 Geo. 3, c. 99, s. 70, and c. 161, s. 86, to defray Costs incurred by the Commissioners in Actions at Law.
- 41.—Form of Certificate of Assessment for raising the Costs incurred by Commissioners in Actions at Law, and of the Allowance thereof.
- 42.—Form of Duplicate of Assessment for Costs incurred by Commissioners in Actions at Law.
- 43.—Form of Collector's Appointment and Warrant to be annexed or subjoined to the foregoing Duplicate of Assessment, Form No. 42.
- 44.—Form of Surveyor's Certificate of Charges of Assessed Taxes for Supplementary Assessment.
- 45.—Form of Oath of Service of Notices of Charge, to be subjoined to the foregoing Certificate, Form No. 44.
- 46.—Form of Allowance by the Commissioners of Surveyor's Certificate of Charges, Form No. 44.
- 47 to 49 relate to Income Tax.
- 50.—Form of Certificate under the Act 43 Geo. 3, c. 99, s. 35, as to Duties of Assessed Taxes in arrear.
- 51.—Form of Warrant to be annexed or subjoined to the foregoing Certificate, Form No. 50.
- 52 to 55 relate to Income Tax.
- 56.—Form of a Schedule of Persons who have made Default in Payment of the Duties of Assessed Taxes to be delivered by the Collector, pursuant to the Acts 48 Geo. 3, c. 141, No. V., Rule 1st, and 3 Geo. 4, c. 88, No. III., Rule 4th.
- 57.—Form of Collector's Affidavit, to be subjoined to the foregoing Schedule, Form No. 56.
- 58.—Form of Collector's Affidavit, to be subjoined to the Forms No. 56 and 57, and to be made after the Schedule has remained with the Commissioners of the Division for the space of 40 days, as directed by the Act 48 Geo. 3, c. 141, No. V., Rule 2nd.
- 59 to 61 relate to Income Tax.
- 62.—Form of Receiving Officer's Certificate, certifying the foregoing Schedules of Defaulter's Forms, No. 56, to the Court of Exchequer, pursuant to the Acts 48 Geo. 3, c. 141, No. V., Rule 2nd, and 1 & 2 Geo. 4, c. 113, s. 32.
- 63.—Form of Receiving Officer's Certificate to the Court of Exchequer, pursuant to the Acts 48 Geo. 3, c. 141, No. V., Rule 3rd, and 1 & 2 Geo. 4, c. 113, s. 34, of Collectors who have made Default in accounting for Duties.
- 64.—Form of Certificate to be made by two Commissioners of Stamps and Taxes for Enrolment in the Office of Her Majesty's Remembrancer of the Court of Exchequer, pursuant to the Act 5 & 6 Will. 4, c. 20, s. 11.
- 65.—Form of Collector's Warrant, which may be issued during the period the Schedules of Defaulters remain with the Commissioners, under the Act 48 Geo. 3, c. 141, No. V., Rule 2nd.

1. *The Acts relating to Management of Commissioners.*

*Forms.*

9 & 10 Vict. c. 56.



9 & 10 Vict. c. 56.

80.—Form of a Warrant of Commitment under the Act 5 & 6 Will. 4, c. 20, s. 16, for want of a sufficient Distress for the Duties of Assessed Taxes in arrear.

{ Commissioners of assessed taxes, [or,  
{ of the property and income tax].

## No. 2.

*Form of Certificate of Assessments of the Duties of Assessed Taxes, and of the Allowance thereof.*

1. *The Acts relating to Management of Commissioners.*

*Forms.*

9 & 10 Vict. c. 56.

County of \_\_\_\_\_, district of \_\_\_\_\_.

*Assessments of the duties of assessed taxes made upon the several persons chargeable with the said duties within the parish of \_\_\_\_\_, in the said district, for the year ending the 5th day of April, 184 \_\_\_\_\_, pursuant to the acts of parliament relating to the said duties, duly certified upon oath by the assessors, and allowed according to the directions of the said acts, by the commissioners of assessed taxes, whose names are signed at the end hereof.*

[Set forth the particulars of the assessments in such tabular or other form as the commissioners of stamps and taxes shall provide for that purpose.]

*We, the undersigned, assessors appointed for making assessments of the duties of assessed taxes for the before mentioned parish of \_\_\_\_\_, for the year ending the 5th day of April, 184 \_\_\_\_\_, do hereby certify the foregoing assessments of the said duties for the parish aforesaid; and we do make oath and declare, that in the foregoing assessments we have charged and assessed ourselves, and all other persons who are chargeable with the said duties, or any of them, within the said parish, and that we have made our said assessments conformably to the provisions of the laws now in force, according to the best of our knowledge and belief; and we do hereby, in pursuance of the directions of the statute in that behalf, return the names of \_\_\_\_\_ and \_\_\_\_\_, of the said parish, as able and sufficient persons to be collectors of the said duties. Witness our hands, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord 184 \_\_\_\_\_.*

} *Assessors.*

*We, the undersigned, commissioners of assessed taxes, acting in and for the district and county aforesaid, do hereby, in pursuance of the said acts relating to the duties of assessed taxes, sign and allow the foregoing assessments, amounting to the sum of \_\_\_\_\_, the same having been duly verified before us by the above-named assessors, as directed by the act of parliament in that behalf made.*

*Given under our hands and seals, at \_\_\_\_\_, within the said district, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 184 \_\_\_\_\_.*

} *Commissioners of assessed taxes.*

## No. 3.

*Form of Duplicate of First Assessments of the Duties of Assessed Taxes, and Abstract of Contracts of Composition for the said Duties.*

County of \_\_\_\_\_, district of \_\_\_\_\_.

*A duplicate of the first assessments of the duties of assessed taxes made upon the several persons chargeable with the said duties within the parish of \_\_\_\_\_, in the said district, for the year ending the 5th day of April, 184 \_\_\_\_\_, pursuant to the acts of parliament relating to the said duties; and an abstract of contracts of composition for the said duties entered into or renewed under the statutes in that behalf, by the several persons within mentioned, to be paid for the same year.*

[Set forth the particulars of the assessments, and the amount to be paid under each contract of composition, in such tabular or other form as the commissioners of stamps and taxes shall provide for that purpose.]

*We, the undersigned, commissioners of assessed taxes, acting in and for the district and county aforesaid, do hereby sign and allow the foregoing duplicate of the first assessments of the duties of assessed taxes, and abstract of contracts of composition for the said duties, amounting in the whole to the sum of \_\_\_\_\_.*

*Given under our hands and seals, at \_\_\_\_\_, within the said district, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord 184 \_\_\_\_\_.*

} *Commissioners of assessed taxes.*

1. *The Acts  
relating to Ma-  
nagement of  
Commissioners.*

No. 4.

*Form of Collector's Appointment and Warrant, to be annexed or subjoined to the foregoing Duplicate.*

Forms.

9 &amp; 10 Vict. c. 56.

To                      and                      , two of the inhabitants of the parish of                      , in the  
district of                      , in the county of                      .

We, the undersigned, commissioners of assessed taxes, acting in and for the district aforesaid, in the county aforesaid, do hereby nominate and appoint you, the above-named                      and                      , collectors of the duties of assessed taxes for the parish of                      , in the said district and county, for the year ending the 5th day of April, 184                      .

And whereas, by virtue and in pursuance of the powers and authorities of the several acts of parliament relating to the said duties, we, the said commissioners, have signed and allowed the first assessments of the said duties for the said year upon the several persons chargeable with the same within the parish aforesaid, and have set our hands and seals to the duplicate of the said assessments, and to the abstract of contracts of composition for the said duties entered into with the persons therein named under the statutes in that behalf, which said duplicate and abstract are herewith delivered unto you: now we, the said commissioners, do hereby enjoin and require you, the above-named collectors, or either of you, to make demand of the several sums contained in the said duplicate and abstract from the parties charged therewith, or at the places of their last abode, or on the premises charged with the assessment, as the case may require, within the time and in the manner appointed and directed by the said acts, and upon payment thereof to give acquittances under your hands (without taking anything for such acquittances, the stamp duty for the same excepted,) unto the several persons who shall pay the same; and if any person or persons shall refuse to pay the sum and sums charged upon him, her, or them, upon demand duly made by you or either of you, then we hereby enjoin and strictly require you, or either of you, for non-payment thereof, to distrain for the same according to the directions of the said acts, by virtue of this our warrant, without further authority.

Given under our hands and seals, at                      , within the said district, the  
day of                      , in the year of our Lord 184                      .

} Commissioners of  
assessed taxes.

No. 16.

*Form of Additional First Assessments of the Duties of Assessed Taxes, and of the allowance thereof.*

County of                      , district of                      .

Additional first assessments of the duties of assessed taxes made upon the several persons within mentioned, chargeable to the said duties within the parish of                      , in the said district, for the year ending the 5th day of April, 184                      , pursuant to the acts of parliament relating to the said duties, in consequence of or arising from returns made by the parties, or consents given before the delivery of a notice of charge, or from omissions of the assessors, or from houses in which there are windows chargeable becoming occupied after the first assessments were signed, the same having been duly certified to the commissioners by the surveyor of the district.

[Set forth the particulars of the assessments, in such tabular or other form as the commissioners of stamps and taxes shall provide for that purpose.]

We, the undersigned, commissioners of assessed taxes, acting in and for the district and county aforesaid, do hereby sign and allow the foregoing additional first assessments of the said duties, amounting to the sum of                      .

Given under our hands and seals, at                      , within the said district, this  
day of                      , in the year of our Lord 184                      .

} Commissioners of  
assessed taxes.

## No. 17.

*Form of Duplicate of Additional First Assessments of the Duties of Assessed Taxes.*

County of , district of .

A duplicate of additional first assessments of the duties of assessed taxes made upon the several persons within mentioned, chargeable to the said duties within the parish of , in the said district, for the year ending the 5th day of April, 184 , pursuant to the acts of parliament relating to the said duties.

[Set forth the particulars of the assessments, in such tabular or other form as the commissioners of stamps and taxes shall provide for that purpose.]

We, the undersigned, commissioners of assessed taxes, acting in and for the district and county aforesaid, do hereby sign and allow the foregoing duplicate of additional first assessments of the duties of assessed taxes, amounting in the whole to the sum of . Given under our hands and seals, at the said district, this day of , in the year of our Lord 184 .

} Commissioners of  
assessed taxes.

## No. 18.

*Form of Collector's Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 17.*

To and , collectors of the duties of assessed taxes for the parish of , in the district of , in the county of .

Whereas, by virtue and in pursuance of the powers and authorities of the several acts of parliament relating to the duties of assessed taxes, we, the undersigned, commissioners of assessed taxes, acting in and for the district aforesaid, in the county aforesaid, have signed and allowed the additional first assessments of the said duties for the year ending the 5th day of April, 184 , upon the several persons mentioned in the foregoing duplicate, chargeable with the same within the parish aforesaid, and have set our hands and seals to the duplicate of the said additional first assessments, which said duplicate is herewith delivered unto you.

Now we the said Commissioners, &c. [Proceed as in Form No. 4, from the words, "Now we, the said commissioners," to the end thereof.]

## No. 26.

*Form of Supplementary Assessments of the Duties of Assessed Taxes, and of the Allowance thereof.*

County of , district of .

Supplementary Assessments of the duties of assessed taxes charged upon the several persons within mentioned, within the parish of , in the said district, for the year ending the 5th day of April, 184 , pursuant to the several acts of parliament relating to the said duties.

[Set forth the particulars of the supplementary assessments in such tabular or other form as the commissioners of stamps and taxes shall provide for that purpose.]

We, the undersigned, commissioners of assessed taxes, acting in and for the district and county aforesaid, do hereby, in pursuance of the acts of parliament relating to the duties of assessed taxes, sign and allow the foregoing supplementary assessments of the said duties, amounting in the whole to the sum of , conformably to the directions of the said acts. Given under our hands and seals, at , within the said district, this day of , in the year of our Lord 184 .

} Commissioners of  
assessed taxes.

1. The Acts  
relating to Ma-  
nagement of  
Commissioners.

Forms.

9 &amp; 10 Vict. c. 56.

1. *The Acts relating to Management of Commissioners.*

No. 27.

*Form of Duplicate of Supplementary Assessments of the Duties of Assessed Taxes.*

*Forms.*  
9 & 10 Vict. c. 56.

County of , district of .

A duplicate of supplementary assessments of the duties of assessed taxes charged upon the several persons within mentioned, within the parish of , in the said district, for the year ending the 5th day of April, 184 , pursuant to the several acts of parliament relating to the said duties.

[Set forth the particulars of the supplementary assessments in such tabular or other form as the commissioners of stamps and taxes shall provide for that purpose.]

We, the undersigned, commissioners of assessed taxes, acting in and for the district and county aforesaid, do hereby, in pursuance of the acts of parliament relating to the duties of assessed taxes, sign and allow and confirm the foregoing supplementary assessments of the said duties, amounting in the whole to the sum of , conformably to the directions of the said acts.

Given under our hands and seals, at , within the said district, this day of , in the year of our Lord 184 .

} Commissioners of  
assessed taxes.

No. 28.

*Form of Collector's Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 27.*

To and , collectors of the duties of assessed taxes for the parish of , in the district of , in the county of .

Whereas, by virtue and in pursuance of the powers and authorities of the several acts of parliament relating to the duties of assessed taxes, we, the undersigned, commissioners of assessed taxes, acting in and for the district aforesaid, in the county aforesaid, have made and executed the supplementary assessments for the year ending the 5th day of April, 184 , of the said duties charged upon the several persons mentioned in the foregoing duplicate, within the parish aforesaid, and have set our hands and seals to the foregoing duplicate of the said supplementary assessments, which said duplicate is herewith delivered unto you.

Now we, the said commissioners, &c. [Proceed as in Form No. 4, from the words, "Now we, the said commissioners," to the end thereof.]

No. 36.

*Form of Appointment of Assessors for making a Re-assessment of Duties, pursuant to the Act 43 Geo. 3, c. 161, s. 56, or the Act 5 & 6 Vict. c. 35, s. 174, on the Default or Failure of the Collector.*

To and , assessors of the duties of assessed taxes [or, assessors of the duties on profits arising from property, professions, trades, and offices, as the case may be,] for the parish of , in the district of , in the county of .

Whereas, an arrear of the duties of assessed taxes [or, of the duties chargeable under the schedule or respective schedules (A.) and (B.), as the case may be, of the act 5 & 6 Vict. c. 35, for granting to her Majesty duties on profits arising from property, professions, trades, and offices,] for the year ending the 5th day of April, 18 , amounting to the sum of , has arisen in the parish of aforesaid, by the default [or neglect, or failure] of , collector of the said duties for the said parish, we, the undersigned, being commissioners of assessed taxes [or, of the property and income tax], acting in and for the said district, do hereby, by virtue of the acts of parliament enabling us in this behalf, appoint you, the above-named and , assessors for making a re-assessment within and upon the said parish, for raising the said arrear; and we do hereby

strictly enjoin and require you and each of you to make a re-assessment within and upon the said parish, by charging the said sum of \_\_\_\_\_ on the amount of the assessment for the said parish, made for the said duties for the year ending the 5th day of April, 18\_\_\_\_, by duly apportioning the amount of such arrear amongst the several persons assessed in the said last-mentioned assessment to the same duties respectively, according to each person's assessment thereof, as nearly as the case will admit; and in making the said re-assessment you are to pursue the like methods, rules, and directions by which the original assessment was made of the same duties. Hereof you will not fail, as you and each of you will answer the contrary at your peril.

Given under our hands and seals, at \_\_\_\_\_, within the said district, this day of \_\_\_\_\_, in the year of our Lord 18\_\_\_\_.

} Commissioners of assessed taxes, [or,  
of the property and income tax.]

1. The Acts relating to Management of Commissioners.

Forms.

9 & 10 Vict. c. 56.

### No. 37.

Form of Certificate of Re-assessment, under the Act 43 Geo. 3, c. 161, s. 56, or the Act 5 & 6 Vict. c. 35, s. 174, and of the Allowance thereof.

County of \_\_\_\_\_, district of \_\_\_\_\_.

A re-assessment of the duties of assessed taxes [or, of the duties chargeable under the schedule or respective schedules (A.) and (B.), as the case may be, of the Act 5 & 6 Vict. c. 35, for granting to her Majesty duties on profits arising from property, professions, trades, and offices,] made upon the several persons chargeable with the said duties within the parish of \_\_\_\_\_, in the said district, pursuant to the several acts of parliament in that behalf, for raising the sum of \_\_\_\_\_, being the amount of an arrear of the said duties which has arisen within the said parish for the year ending the 5th day of April, 18\_\_\_\_, by the default [or neglect, or failure] of \_\_\_\_\_, collector of the said duties for the said parish, for the said year ending as aforesaid, duly verified upon oath by the assessors, and allowed, according to the directions of the said acts of parliament, by the commissioners of assessed taxes [or, of the property and income tax], acting for the said district, whose names are signed at the end hereof.

[Set forth the particulars of the re-assessment in such tabular or other form as the commissioners of stamps and taxes shall provide for that purpose.]

We, the undersigned, assessors appointed for making the foregoing re-assessment of the duties of assessed taxes [or, of the duties chargeable under the schedule or respective schedules (A.) and (B.), as the case may be, of the act 5 & 6 Vict. c. 35] for the parish of \_\_\_\_\_ aforesaid, do hereby certify the foregoing re-assessment of the said duties, and do make oath and declare that we have charged and assessed ourselves and all other persons who are chargeable with the said re-assessment, and that we have made our re-assessment conformably to the provisions of the laws now in force, according to the best of our knowledge and belief. Witness our hands, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord 18\_\_\_\_.

} Assessors.

We, the undersigned, commissioners of assessed taxes [or, of the property and income tax, as the case may be,] acting for the district of \_\_\_\_\_ aforesaid, do hereby sign and allow the foregoing re-assessment of the duties of assessed taxes [or, as the case may be,] amounting to the sum of \_\_\_\_\_, the same having been duly verified before us by the above-named assessors.

Given under our hands and seals, at \_\_\_\_\_, within the said district, this day of \_\_\_\_\_, in the year of our Lord 18\_\_\_\_.

} Commissioners of assessed taxes, [or,  
of the property and income tax.]

Note.—This form may be adapted and applied to the duties payable under the schedule (D.) of the act 5 & 6 Vict. c. 35.

1. *The Acts  
relating to Ma-  
nagement of  
Commissioners.*

No. 38.

*Form of Duplicate of Re-assessment, under the Act 43 Geo. 3, c. 161, s. 56, or  
5 & 6 Vict. c. 35, s. 174.*

*Forms.*  
9 & 10 Vict. c. 56.

County of \_\_\_\_\_, district of \_\_\_\_\_.

A duplicate of the re-assessment of the duties of assessed taxes [or, of the duties chargeable under the schedule or respective schedules as the case may be, of the act 5 & 6 Vict. c. 35, for granting to her Majesty duties on profits arising from property, professions, trades, and offices,] made upon the several persons chargeable with the said duties within the parish of \_\_\_\_\_, in the said district, pursuant to the several acts of parliament in that behalf, for raising the sum of \_\_\_\_\_, being the amount of an arrear of the said duties which has arisen within the said parish for the year ending the 5th day of April, 18\_\_\_\_, by the default [or neglect, or failure] of \_\_\_\_\_, collector of the said duties for the said parish for the said year ending as aforesaid.

[Set forth the particulars of the re-assessment in such tabular or other form as the commissioners of stamps and taxes shall provide for that purpose.]

We, the undersigned, commissioners of assessed taxes [or, of the property and income tax, as the case may be], acting in and for the district of \_\_\_\_\_ aforesaid, do hereby sign and allow the foregoing duplicate of the re-assessment of the duties of assessed taxes [or, as the case may be], amounting to the sum of \_\_\_\_\_ . Given under our hands and seals, at \_\_\_\_\_, within the said district, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord 18\_\_\_\_.

} Commissioners of assessed taxes, [or,  
} of the property and income tax.]

No. 39.

*Form of Collectors' Appointment and Warrant to be annexed or subjoined to the  
foregoing Duplicate of the Re-assessment of Duties, No. 38.*

To \_\_\_\_\_ and \_\_\_\_\_, collectors of the duties of assessed taxes [or, of the duties on profits arising from property, professions, trades, and offices, as the case may be,] for the parish of \_\_\_\_\_, in the district of \_\_\_\_\_, in the county of \_\_\_\_\_.

Whereas we, the undersigned, commissioners of assessed taxes [or, of the property and income tax], acting in and for the district of \_\_\_\_\_ aforesaid, have, by virtue of the acts relating to the duties of assessed taxes [or, of the duties on profits arising from property, professions, trades, and offices], made and executed a re-assessment of the said duties, for raising an arrear of the said duties, arising by the default [or neglect, or failure] of \_\_\_\_\_, collector of the said duties for the parish aforesaid, for the year ending the 5th day of April, 18\_\_\_\_, upon the several persons chargeable with the said duties within the said parish, and have set our hands and seals to the duplicate of the said re-assessment, which is herewith delivered unto you.

Now we, the said commissioners, do hereby nominate and appoint you, the above-named \_\_\_\_\_ and \_\_\_\_\_, collectors thereof, and do hereby enjoin and require you, or either of you, the said collectors, to make demand of the several sums contained in the said duplicate from the parties charged therewith, or at the places of their last abode, and upon payment thereof to give acquittances under your hands unto the several persons who shall pay the same; and if any person or persons shall refuse to pay the sum and sums charged upon him, her, or them, upon demand duly made by you or either of you, then we hereby enjoin and strictly require you or either of you, for non-payment thereof, to distrain for the same according to the directions of the said acts, by virtue of this our warrant, without further authority. Given under our hands and seals, at \_\_\_\_\_, within the said district, the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

} Commissioners of assessed taxes, [or,  
} of the property and income tax.]

## No. 40.

*Form of Assessors' Appointment for making an Assessment, pursuant to the Acts 43 Geo. 3, c. 99, s. 70, and c. 161, s. 86, to defray Costs incurred by the Commissioners in Actions at Law.*

1. *The Acts relating to Management of Commissioners.*

*Forms.*

9 & 10 Vict. c. 56.

To                      and                      , assessors of the duties of assessed taxes [or, of the duties on profits arising from property, professions, trades, and offices, as the case may be,] for the parish of                      , in the district of                      , in the county of                      .

Whereas, certain costs and charges, amounting to the sum of                      , have been incurred in an action [or suit] commenced by [or against] the commissioners of assessed taxes [or, of the property and income tax], acting in and for the district of                      , in the county of                      , [or, against the collectors of the parish of                      , in the said district, as the case may be], against [or by] one E. F., and which action [or suit] was commenced [or defended] by the said commissioners, in pursuance of the powers given to them by the acts of parliament in that behalf; we, the undersigned, being commissioners of assessed taxes [or, of the property and income tax], acting in and for the said district, do hereby, by virtue of the acts of parliament enabling us in this behalf, appoint you, the above-named                      and                      , assessors for making an assessment for defraying the said sum of                      ; and we do hereby strictly enjoin and require you, and each of you, to make an assessment within and upon the parish of                      aforesaid, by charging the said sum of                      in a just proportion to the amount of the duties of assessed taxes, [or, of the duties on profits arising from property, professions, trades, and offices,] assessed on the respective persons chargeable to the same in the assessment of the said duties for the said parish, made for the year ending the 5th day of April, 18                      ; and in making the said assessment you are to pursue the like rules, methods, and directions by which the assessments of the said duties were made for the said parish: hereof you will not fail, as you and each of you will answer the contrary at your peril.

Given under our hands and seals, at                      , within the said district, the day of                      , in the year of our Lord 18                      .

} Commissioners of assessed taxes, [or,  
} of the property and income tax.]

## No. 41.

*Form of Certificate of Assessment for raising the Costs incurred by Commissioners in Actions at Law, and of the Allowance thereof.*

County of                      district of                     

An assessment made upon the several persons within mentioned who are chargeable with the duties of assessed taxes [or the duties on profits arising from property, professions, trades, and offices, as the case may be,] within the parish of                      in the said district, for defraying the sum of                      , being the amount of certain costs and charges incurred in an action [or suit] commenced by [or, against] the commissioners of assessed taxes [or of the property and income tax] acting in and for the said district [or against the collector of the said duties for the said parish], against [or by] one E. F., and which action [or suit] was commenced [or defended] by the said commissioners in pursuance of the powers given to them by the acts of parliament in that behalf, which assessment is duly certified on oath by the assessors, and allowed by the commissioners whose names are signed at the end hereof.

[Set forth the particulars of the assessment in such tabular or other form as the commissioners of stamps and taxes shall provide for that purpose.]

We the undersigned assessors appointed for making an assessment for defraying the costs and charges hereinbefore mentioned, do hereby certify the foregoing



1. *The Acts relating to Management of Commissioners.*

*Forms.*  
9 & 10 Vict. c. 56.

assessment, and do make oath and declare that in the said assessment we have charged and assessed ourselves and all other persons who are chargeable with the said assessment, and that we have made our said assessment conformably to the provisions of the laws now in force, according to the best of our knowledge and belief.

Witness our hands, this            day of            , in the year of our Lord, 18    .

} Assessors.

We the undersigned, commissioners of assessed taxes [or, of the property and income tax], acting in and for the district of            , aforesaid, do hereby sign and allow the foregoing assessment, amounting to the sum of            , the same having been duly verified before us by the above named assessors.

Given under our hands and seals at            , within the said district, this            day of            , in the year of our Lord, 18    .

} Commissioners of assessed taxes  
[or, of the property and income tax.]

#### No. 42.

*Form of Duplicate of Assessment for Costs incurred by Commissioners in Actions at Law.*

County of            , district of            .

A duplicate of an assessment made upon the several persons within mentioned, who are chargeable with the duties of assessed taxes [or, the duties on profits arising from property, professions, trades, and offices, as the case may be], within the parish of            , in the said district, for defraying the sum of            being the amount of certain costs and charges incurred in an action [or, suit] commenced by [or, against] the commissioners of assessed taxes [or, of the property and income tax] acting in and for the said district [or, against the collector of the said duties for the said parish], against [or by] one E. F., and which action [or suit] was commenced [or defended] by the said commissioners in pursuance of the powers given to them by the acts in that behalf.

[Set forth the particulars of the assessment in such tabular or other form as the commissioners of stamps and taxes shall provide for that purpose.]

We the undersigned, commissioners of assessed taxes [or, of the property and income tax, as the case may be,] acting in and for the district of            , aforesaid, do hereby sign and allow the foregoing duplicate of assessment, amounting to the sum of            .

Given under our hands and seals at            , within the said district, this            day of            , in the year of our Lord, 18    .

} Commissioners of assessed taxes  
[or, of the property and income tax.]

#### No. 43.

*Form of Collector's Appointment and Warrant to be annexed or subjoined to the foregoing Duplicate of Assessment, Form, No. 42.*

To            and            , collectors of the duties of assessed taxes [or, of the duties on profits arising from property, professions, trades, and offices,] for the parish of            , in the district of            , in the county of            .

Whereas we the undersigned, commissioners of assessed taxes [or, of the property and income tax] acting in and for the district of            , aforesaid, have, by virtue of the acts of parliament relating to the duties of assessed taxes [or, the duties on profits arising from property, professions, trades, and offices], made and executed upon the several persons chargeable with the duties of assessed taxes

[or, the duties on profits arising from property, professions, trades, and offices,] within the parish of , an assessment for defraying the sum of , being the amount of certain costs and charges incurred in an action [or suit] commenced by [or against] the commissioners of assessed taxes [or, of the property and income tax] for the said district [or, against the collector of the said duties for the parish aforesaid] against [or by] one E. F., which said action [or suit] was commenced [or defended] by the said commissioners in pursuance of the powers given to them by the said acts; and we have set our hands and seals to the duplicate of the said assessment, which is herewith delivered unto you

1. The Acts relating to Management of Commissioners.

Forms.

9 & 10 Vict. c. 56.

Now we the said commissioners do hereby nominate and appoint you the above-named and , collectors thereof, and do hereby enjoin and strictly require you, or either of you, the said collectors, to make demand of the several sums contained in the said duplicate, from the parties charged therewith, or at the places of their last abode; and if any person or persons shall refuse to pay the sum and sums charged upon him, her, or them, upon demand duly made by you or either of you, then we hereby enjoin and strictly require you, or either of you, for nonpayment thereof, to distrain for the same, according to the directions of the said acts, by virtue of this our warrant, without further authority.

Given under our hands and seals at , in the said district, this day of , in the year of our Lord, 18 .

} Commissioners of assessed taxes  
{ [or, of the property and income tax.]

#### No. 44.

#### Form of Surveyor's Certificate of Charges of Assessed Taxes for Supplementary Assessment.

A certificate of charges of the duties of assessed taxes for the year ending the fifth day of April, 18 , made pursuant to the statutes in that behalf by , surveyor of taxes, acting for the district of , in the county of , and presented to the commissioners of assessed taxes acting in and for the said district.

[Here set forth, in such tabular, or other form, as may be convenient for the purpose, the names of the several parties charged, and of the parishes or places in which they ought to be assessed, with the particulars and amount of the charges, and dates of the service of notices of charge.]

I, , surveyor of taxes, acting for the district of , in the county of , do hereby certify to the commissioners of assessed taxes, acting within and for the said district, the foregoing charges of the duties of assessed taxes for the year ending the fifth day of April, 18 , made by me upon the several persons before mentioned, pursuant to the statutes in that behalf.

Witness my hand, this day of , in the year of our Lord, 18 .

} Surveyor.

#### No. 45.

#### Form of Oath of Service of Notices of Charge to be subjoined to the foregoing Certificate, Form, No. 44.

I, , of , do swear, that a notice in writing was duly served upon each person mentioned in the above certificate, containing the particulars as set forth therein respectively, on the day or days mentioned in the said certificate.

Sworn at , in the county of , the day of , 18 , before me

} Commissioner of  
{ assessed taxes.

1. *The Acts relating to Management of Commissioners.*

*Forms.*  
9 & 10 Vict. c. 56.

No. 46.

*Form of Allowance by the Commissioners of Surveyor's Certificate of Charges, Form, No. 44.*

*The foregoing certificate of charges of the duties of assessed taxes having been presented to us the undersigned, commissioners of assessed taxes acting in and for the district of , in the county of , and oath having been made that a notice of charge has been duly served upon each person mentioned in the said certificate as the party charged, pursuant to the statute in that behalf, we the said commissioners do hereby allow the said certificate.*

*Witness our hands, the                      day of                      , in the year of our Lord, 18                      .*  

Commissioners of assessed taxes.

No. 50.

*Form of Certificate under the Act 43 Geo. 3, c. 99, s. 35, as to Duties of Assessed Taxes in arrear.*

*To the commissioners of assessed taxes acting within and for the parish of , in the district of , in the county of .*  
*We the undersigned, commissioners of assessed taxes, acting within and for the parish of , in the district of , in the county of , do hereby certify, that in and by the first [or, additional first, or, supplementary, as the case may be,] assessments of the duties of assessed taxes for the said last mentioned parish for the year ending the fifth day of April, 18 , A. B., now residing in the parish of , aforesaid, hath been duly charged and assessed in the sum of , for the under-mentioned duties of assessed taxes; (that is to say,)*

	£	s.	d.
[Here specify the Particulars of the Assessment.]			
Total . . . . . £			

*And we do further certify, that the said A. B. hath left unpaid the sum of , in respect of the said duties so charged and assessed as aforesaid, which became due and payable on the                      day of                      , and the said last-mentioned sum is now in arrear.*  
*And we the undersigned commissioners do request you the said commissioners of assessed taxes, acting within and for the parish of , aforesaid, to raise and levy the said sum of , so charged and assessed upon and left unpaid by the said A. B., and now in arrear as aforesaid, and to cause the same to be paid and applied according to the directions of the several acts of parliament for raising the said duties.*

*Given under our hands and seals at                      , in the said district of , this                      day of                      , in the year of our Lord, 18                      .*  

Commissioners of assessed taxes.

## No. 51.

1. *The Acts  
relating to Ma-  
nagement of  
Commissioners.*

*Forns.*

9 & 10 Vict. c. 56.

*Form of Warrant to be annexed or subjoined to the foregoing certificate,  
Form, No. 50.*

To                      and                      , collectors of the duties of assessed taxes for the parish  
of                      , in the district of                      , in the county of                      .

We the undersigned, commissioners of assessed taxes acting within and for the parish of                      , in the district of                      , in the county of                      , do hereby authorise and require you, the above-named collectors, or either of you, to make due demand of and from A. B., the person named in the foregoing certificate, of payment of the sum of                      , in respect of the duties of assessed taxes, charged and assessed upon and left unpaid by him, as in the said certificate is mentioned, and if he shall refuse or neglect to pay the same upon such demand being made, then we hereby empower and require you, or either of you, to distrain for the same, according to the directions of the statute in that behalf, by virtue of this our warrant, without further authority; and upon receipt of the said sum of money, or any part thereof, we hereby direct and enjoin you to pay over the same to the receiving officer for the county of                      , to the account of the collectors of assessed taxes for the said parish of                      , for which this shall be your sufficient authority.

Given under our hands and seals at                      , in the said district of                      ,  
this                      day of                      , in the year of our Lord, 18                      .

} Commissioners  
of assessed taxes.

## No. 56.

*Form of a Schedule of Persons who have made default in Payment of the  
Duties of Assessed Taxes, to be delivered by the Collector, pursuant to the  
Acts 48 Geo. 3, c. 141, No. V. Rule 1st, and 3 Geo. 4, c. 88, No. III.  
Rule 4th.*

A Schedule containing the christian and surname of persons who have been charged and assessed to the duties of assessed taxes within the parish of                      , in the division of                      , in the county of                      , for the year ending the fifth day of April, 18                      , who have respectively made default in payment of the under-mentioned sums in respect of the said duties, and which said schedule is delivered by the undersigned collector of assessed taxes for the said parish, pursuant to the acts of parliament in that behalf.

} Collector of  
assessed taxes.

The Christian and Surname of each Defaulter.	Amount of Assessed Taxes due the                      day of                      18		
	£	s.	d.

*Note.*—If the collector of the duties of assessed taxes be also the collector of the land tax for the same parish or place, the names of the persons making default in payment of the land tax may also be returned, pursuant to the act 4 & 5 Will. 4, c. 60, s. 7, in the same schedule with those of the defaulters to the assessed taxes; and in

1. *The Acts relating to Management of Commissioners.*

that case the foregoing form No. 56, and the following forms, severally numbered 57, 58, and 62, may be used, with such alterations therein and additions thereto as may be necessary to adapt them to the occasion.

*Forms.*  
& 10 Vict. c. 56.

No. 57.

*Form of Collector's Affidavit to be subjoined to the foregoing Schedule, Form, No. 56.*

I , of , collector of the duties of assessed taxes for the parish of , in the division of , in the county of , do make oath and say, that the several sums of money contained in the foregoing schedule, and set against the names of the several persons therein mentioned, have been demanded from and are due and wholly unpaid from the respective persons charged therewith, either to me, or to any other person or persons for me, to the best of my knowledge and belief.

} Collector of  
assessed taxes.

Sworn before me, the receiving officer of the land and assessed taxes for the county of , the day of , 18 .

No. 58.

*Form of Collector's Affidavit to be subjoined to the Forms No. 56 and 57, and to be made after the Schedule has remained with the Commissioners of the Division for the space of Forty Days, as directed by the Act, 48 Geo. 3, c. 141, No. V. Rule 2nd.*

I, , the collector above named, do make oath and say, that in pursuance of and according to the directions given to me by the commissioners of assessed taxes acting for the above named division, I gave notice, on or before the day of , to each and every of the persons whose names are contained in the foregoing schedule, that the name of each such person was returned in a schedule to the said commissioners as having made default in payment of the sums of money set against their respective names: and that the several sums of money for which the several persons whose names are contained in the said schedule as now remaining in default, and to whom such notices were delivered, are still due and unpaid from the said several persons respectively, either to me, or to any person or persons for me, to the best of my knowledge and belief.

} Collector of  
assessed taxes.

Sworn at . in the division of , in the county of , the day of , 18 , before me

} A commissioner of  
assessed taxes.

No. 62.

*Form of Receiving Officer's Certificate, certifying the foregoing Schedules of Defaulters, Forms No. 56 and 59, to the Court of Exchequer, pursuant to the Acts 48 Geo. 3, c. 141, No. V., Rule 2nd, and 1 and 2 Geo. 4, c. 113, s. 32.*

*In the Exchequer.*

To the right honourable lord chief baron of her Majesty's Court of Exchequer at Westminster, and to the honourable the rest of the barons of the same court.

I of in the county of receiving officer of the duties of land and assessed taxes [or, of the duties on profits arising from pro-

erty, professions, trades, and offices,] for the county of do hereby humbly certify to the barons of this honourable court, in pursuance of the statutes in this behalf made and provided, that on my receipt, held after the day of now last past, I received of and from the collector of the duties aforesaid charged and assessed on the several persons chargeable within the parish of in the division of in the said county, for the year ending the day of 18, the schedule hereunto annexed, signed by the said collector, and containing the christian and surname of each and every person who made default in the payment of the duties and sums of money specified in the said schedule, which had been charged and assessed upon such persons respectively by virtue of the several acts of parliament granting the said duties, and which became due on the day of and also the sums then in arrear from each and every such person; which said schedule was then and there duly attested and subscribed by the said collector, according to the directions of the statutes in such case made and provided; and I the said receiving officer, do hereby further certify to this honourable court, that the several sums of money so mentioned in the said schedule to be in arrear are wholly due and unpaid to me as such receiving officer as aforesaid.

1. The Acts relating to Management of Commissioners.

Forms.

9 & 10 Vict. c. 56.

Given under my hand, this day of in the year of our Lord 18 .

No. 63.

Form of Receiving Officer's Certificate to the Court of Exchequer, pursuant to the Acts 48 Geo. 3, c. 141, No. V., Rule 3rd, and 1 and 2 Geo. 4, c. 113, s. 33, of Collectors who have made default in accounting for duties.

In the Exchequer.

To the right honourable lord chief baron of her Majesty's Court of Exchequer at Westminster, and to the honourable the rest of the barons of the same court.

I, of , receiving officer of the duties of assessed taxes, [or, the duties on profits arising from property, professions, trades, and offices,] charged and assessed in the parishes and places hereinafter mentioned, by virtue of the several acts of parliament in that behalf, do hereby humbly certify to the barons of this honourable court, in pursuance of the several statutes in this behalf made and provided, that the several and respective times and places mentioned and described against the name of each division in the schedule hereunto subjoined were by me appointed, according to the directions of the statutes in that case made and provided, for payment to me, as such receiving officer as aforesaid, of the first moiety [or remainder] of the duties of assessed taxes [or, the duties on profits arising from property, professions, trades, and offices,] assessed and charged within the several parishes and places, and within the respective divisions mentioned in the said schedule for the year ending on the fifth day of April 18, and which are by the said statutes directed to be collected or levied by the several collectors of the said duties before the day of now last past, or within twenty-one days thereafter; and that I the said receiving officer did attend at the said several and respective times and places so appointed as aforesaid, for the purpose of receiving the said duties; and that the several collectors of the said duties for the said several parishes and places within the said divisions respectively did then and there make default in paying or accounting for the said first moiety [or remainder] of the said duties given to them in charge for the said parishes and places respectively, in the several sums mentioned in the said schedule, and did then and there neglect and wholly make default in delivering to me, the said receiving officer, a schedule in writing signed by such collectors respectively, containing the christian and surname of each person making default in payment of the said duties and the respective sums then in arrear from each such defaulter, with an affidavit subscribed and made according to the directions of the statutes in that case made and provided, contrary to the form of the said statutes.

And I the said receiving officer, in pursuance of the several statutes in this behalf, do hereby further humbly certify to this honourable court, that the said schedule hereunto subjoined doth also contain the names of the several collectors in default as aforesaid, and of the several parishes and places in which default has been made as aforesaid, and the divisions where such failure hath hap-

1. *The Acts relating to Management of Commissioners.*

*pened, and the amounts of the several duties which remain unpaid or unaccounted for by the said collectors respectively, to the best of my knowledge, and as I verily believe.*

*Given under my hand, this                      day of                      in the year of our Lord 18                      .*  
*Witness,*

*Forms.*  
9 & 10 Vict, c. 56.

*Schedule to which the foregoing certificate doth refer, containing the names of collectors who have not paid, or duly accounted by the delivery of schedules of defaulters, for the full amount of the first moiety [or remainder] of the duties of assessed taxes [or the duties on profits arising from property, professions, trades, and offices] for the year ending the fifth day of April 18                      .*

Division.	Times and Places appointed within and for each Division for the Payment of the Duties above described.	Parishes and Places.	Collectors' Names.	Amount of the Duties remaining unpaid, and for which no Paper Schedules have been delivered.		
				£	s.	d.

No 64.

*Form of Certificate to be made by Two Commissioners of Stamps and Taxes, for Enrolment in the Office of Her Majesty's Remembrancer of the Court of Exchequer, pursuant to the Act 5 and 6 Will. 4. c. 20, s. 11.*

*In the Exchequer.*  
*To the right honourable                      lord chief baron of her Majesty's Court of Exchequer at Westminster, and to the honourable the rest of the barons of the same court.*

*We,                      and                      esquires, two of the commissioners of stamps and taxes, do hereby humbly certify to the barons of this honourable court, in pursuance of an act passed in the sixth year of the reign of King William the Fourth, intituled "An Act to consolidate certain Offices in the Collection of the Revenues of Stamps and Taxes, and to amend the Laws relating thereto," that the several collectors of the duties of assessed taxes [or, of the duties on profits arising from property, professions, trades, and offices] for the several parishes, wards, and places specified and set forth in the schedule hereunto annexed within the county of                      , have made default in payment of the several sums contained in the said schedule, and set opposite to the names of such parishes, wards, and places, and to the names of such collectors for the same respectively, which said sums are charged and chargeable upon the same parishes, wards, and places respectively for the said duties, as set forth and distinguished in the said schedule, for the year ended on the                      day of                      and which said several sums are now wholly in arrear and unpaid; and we the said commissioners do make this certificate to the intent that due process in the law may be issued in relation to the said duties respectively.*

*Given under our hands, this                      day of                      in the year of our Lord 18                      .*

SCHEDULE referred to in the foregoing certificate.

Division.	Name of Parish, Ward, or Place.	Names of the Collectors.	Sums in Arrear.		
			£	s.	d.

*Note.*—The collectors who make default in paying or accounting for the land tax within the same divisions may also be included in the same schedule with the collectors who are defaulters as to the duties of assessed taxes; and in that case the foregoing forms of certificates, No. 63 and 64, and of the schedule to be subjoined thereto, may be used, with such alterations therein and additions thereto as may be necessary to adapt them to the occasion.

1. *The Acts relating to Management of Commissioners.*

*Forms.*

9 & 10 Vict. c. 56.

No. 65.

*Form of Collector's Warrant which may be issued during the Period the Schedules of Defaulters remain with the Commissioners, under the Act 48 Geo. 3. c. 141, No. V., Rule 2nd.*

To                      and                      collectors of the duties herein-after mentioned for  
the parish of                      in the district of                      in the county of

Whereas the commissioners of assessed taxes [or of the property and income tax] acting in and for the before-mentioned district have made and executed the several assessments of the duties of assessed taxes [or, of the duties on profits arising from property, professions, trades, and offices,] for the year ending the fifth day of April 18      , upon the several persons chargeable with the said duties within the parish aforesaid, and duplicates of the same have been delivered to you, the above-named collectors of the said duties; and whereas the said commissioners have received, in pursuance of the acts of parliament in that behalf, a certain schedule in writing, signed and duly sworn to by you the said collectors, whereby the several persons therein named are returned as defaulters for that the several sums assessed upon them and therein contained have been demanded from and are due and wholly unpaid from the respective persons charged therewith: now we the undersigned, commissioners of assessed taxes [or, of the property and income tax] acting in and for the district aforesaid, do hereby enjoin and require you or either of you the above-named collectors to make demand of the several sums mentioned in the said schedule, and contained in the said assessments, from the parties charged therewith, or at the places of their last abode, or on the premises charged with the assessment, as the case may require, and upon payment thereof to give acquittances under your hands unto the several persons who shall pay the same; and if any person or persons shall refuse to pay the sum and sums charged upon him, her, or them, upon demand duly made by you or either of you, then we hereby enjoin and strictly require you or either of you, for nonpayment thereof to distrain for the same, according to the directions of the said acts, by virtue of this our warrant, and that you return to us the amount and particulars of the several sums received by you on the      day of      now next, at the usual place of meeting, namely, at      in the said district.

Given under our hands and seals at      in the said district, the  
day of      in the year of our Lord 18      .

{ Commissioners of assessed taxes  
[or, of the property and income tax.]

No. 66.

*Form of Return to be made by Collectors under the Act 43 Geo. 3. c. 99, s. 45, of Arrears of Duties which cannot be recovered by the Collectors.*

A schedule made by me, the undersigned      collector of the duties of assessed taxes [or, of the duties on profits arising from property, professions, trades, and offices,] for the parish of      in the district of      in the county of      containing the names, surnames, and places of abode of every person charged with the duties and sums of money in the assessments made by virtue of the acts relating to the said duties, within and for the said parish of      for the year ending the fifth day of April 18      , who have made default in payment of the several duties and sums of money set opposite to their respective names, and charged upon them respectively in the said assessments, and



1. *The Acts relating to Management of Commissioners.*

*Forms.*

9 & 10 Vict. c. 56.

from whom I have not been able to collect or receive such duties and sums of money for the causes herein mentioned.

[Set forth, in such tabular or other form as the commissioners of stamps and taxes shall provide for the purpose, the christian and surnames and places of abode of the defaulters, with the particulars of the duties and sums of money charged upon them respectively, and the particular reason for returning each defaulter.]

Given under my hand, this                      day of                      in the year of our Lord 18 .

{ Collector of the aforesaid duties.

No. 67.

*Form of Oath to be made by the Collectors, and endorsed on the foregoing Schedule, Form No. 66.*

I                      collector of the duties of assessed taxes [or, of the duties on profits arising from property, professions, trades, and offices,] for the within-mentioned parish of                      do make oath and say, that the several sums for which the persons within-mentioned are respectively returned in default are and each of them is due and wholly unpaid to me, or to any other person or persons for me, to the best of my knowledge and belief, and that the several persons whose names are returned in the within schedule, and who are therein described as insolvent or bankrupt, became insolvent or bankrupt, as within respectively described, before the day on which the duties respectively charged upon the said several persons, and within set forth, or any part thereof, became payable, and that the said several persons respectively had not goods and chattels sufficient whereon to raise and levy the said respective duties within the said parish, at any time since such duties respectively or any part thereof became payable; and that the several persons whose names are returned in the within schedule, and who are therein described as removed from the said parish, did respectively remove from the said parish before the day on which the duties respectively charged upon the said last-mentioned persons, and within set forth, or any part thereof, became payable, without leaving in the said parish sufficient goods and chattels whereon the said last-mentioned respective duties, payable at the time of the said last-mentioned persons respectively removing, could be raised and levied; and that the several persons whose names are returned in the within schedule, and who are therein described as having died, did respectively die before the day on which the duties respectively charged upon the said last-mentioned persons, and within set forth, or any part thereof, became payable, without leaving sufficient goods and chattels whereon the said last-mentioned respective duties, or any part thereof, could be raised and levied, and that there were not nor are any goods and chattels of any person or persons liable to the payment of the said duties respectively within set forth, and mentioned to be in arrear, or any part thereof, whereby the same or any part thereof could or might respectively be raised or levied.

{ Collector of the aforesaid duties.

We the undersigned, commissioners of assessed taxes [or, of the property and income tax], acting in and for the district of                      in the county of                      do hereby certify, that                      the above-named collector, did take and subscribe the foregoing oath before us at                      in the said district, this                      day of                      in the year of our Lord 18 .

{ Commissioners of assessed taxes  
[or, of the property and income tax.]

No. 68.

*Form of a Schedule of Defaulters to be made out by the Commissioners, pursuant to the Act 43 Geo. 3, c. 99, s. 45, and to be deposited with the Commissioners of Stamps and Taxes, pursuant to the Act 5 and 6 Will. 4, c. 20, s. 13.*

*A schedule made in pursuance of an act of parliament passed in the forty-third year of the reign of King George the Third, intituled "An Act for con-*

solidating certain of the provisions contained in any act or acts relating to the duties under the management of the commissioners for the affairs of taxes, and for amending the same," by the commissioners of assessed taxes [or, of the property and income tax] acting in and for the district of \_\_\_\_\_ in the county of \_\_\_\_\_

containing the names of certain persons charged with duties and sums of money in the assessments made by virtue of the acts relating to the duties of assessed taxes [or, of the duties on profits arising from property, professions, trades, and offices] within and for the parish of \_\_\_\_\_ in the said district, for the year ending the fifth day of April 18\_\_\_\_, and whose names have been returned to the said commissioners by \_\_\_\_\_ collector of the said duties for the said parish as persons who have made default in payment of the several duties and sums of money set opposite to their respective names, and charged upon them respectively in the said assessments, and from whom the said collector has not been able to collect or receive such duties and sums of money for the causes herein mentioned, and which have been duly verified on the oath of the said collector.

[Set forth, in such tabular or other form as the commissioners of stamps and taxes shall provide for the purpose, the names of the defaulters, with the particulars of the duties and sums of money charged upon them respectively, and the particular reason assigned by the collector for returning each defaulter.]

Given under the hands and seals of us the undersigned, two of the commissioners of assessed taxes [or, of the property and income tax] acting in and for the district aforesaid at \_\_\_\_\_ within the said district, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18\_\_\_\_.

} Commissioners of assessed taxes  
[or of the property and income tax.]

#### No. 69.

*Form of Revocation of the appointment of a Collector, and Appointment of another Collector in his Stead, under the Act 43 Geo. 3, c. 99, s. 40.*

To \_\_\_\_\_ one of the inhabitants of the parish of \_\_\_\_\_ in the district of \_\_\_\_\_ in the county of \_\_\_\_\_.

Whereas by virtue and in pursuance of the powers and authorities of the several acts of parliament relating to the duties of assessed taxes [or, of the duties on profits arising from property, professions, trades, and offices], and \_\_\_\_\_ two of the commissioners of assessed taxes [or, of the property and income tax] acting in and for the district aforesaid, did, by their precept bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, nominate and appoint \_\_\_\_\_ and \_\_\_\_\_ to be collectors of the said duties for the parish aforesaid for the year ending the fifth day of April 18\_\_\_\_: and whereas wilful delay and failure hath happened in demanding, receiving, and recovering and paying over divers sums of money and duties charged and assessed on the several persons chargeable with the said sums of money and duties within the said parish for the year aforesaid, through the default and neglect of the said \_\_\_\_\_ one of the collectors of the said duties:

Now we the undersigned, two of the commissioners of assessed taxes [or, of the property and income tax] acting in and for the said district, do, by virtue and in pursuance of the powers and authorities given by the acts of parliament in this behalf, hereby revoke the appointment of the said \_\_\_\_\_ as such collector as aforesaid; and we do by this our precept nominate and appoint you the above-named \_\_\_\_\_ in the place and stead of the said \_\_\_\_\_ to be collector of the duties and sums of money remaining due and in arrear and uncollected on the duplicate of assessments herewith delivered to you for the said year ending the fifth day of April 18\_\_\_\_, with full power to collect all arrears and sums of money which are now due and unreceived from the parties charged therewith by the said assessments; and we do hereby enjoin and require you immediately to make demand of the several sums contained in the said duplicate from the parties charged therewith, or at the places of their last abode, or on the premises charged with the assessment, as the case may require, and upon payment thereof to give acquittances unto the several persons who shall pay the same; and if any person or persons from whom any of the said duties or sums of money, or any

1. The Acts relating to Management of Commissioners.

Forms.

9 & 10 Vict. c. 56.

1. *The Acts relating to Management of Commissioners.* part thereof, now remain due or unpaid, shall refuse to pay the sum and sums charged upon and due and owing from him, her, or them, upon demand made by you, then we hereby enjoin and strictly require you, for nonpayment thereof, to distrain for the same according to the directions of the said acts, by virtue of this our warrant, without further authority.

*Forms.*

9 & 10 Vict. c. 56.

Given under our hands and seals at  
day of

within the said district, the

} Commissioners of assessed taxes  
{ [or, of the property and income tax.]

### No. 70.

*Form of a Warrant under the Act 3 Geo. 4, c. 88, s. 3, to imprison the Person and seize the Estate of a Collector making default in payment of duties collected.*

To constable of in the county of , and to keeper of  
the gaol of in the said county.

Whereas it appears to us and whose hands and seals are hereunto subscribed and set, being two of the commissioners of assessed taxes [or, of the property and income tax, as the case may be] acting for the district of in the county of upon the oath of and other sufficient evidence [or, upon confession of the defaulter, as the case may be] that C. D. of, &c., a collector of the duties of assessed taxes [or, as the case may be] for the parish of in the said district, hath as such collector collected and received from divers persons within the said parish the sum of in respect of the said duties, and that the said C. D. hath neglected [or, refused] to pay the said sum of money according to the directions of the several acts of parliament in that behalf, and that he hath detained and doth now detain the same in his hands :

Now therefore we the said commissioners, whose hands and seals are hereunto subscribed and set, do hereby command you the above-named constable to apprehend the said C. D., and him safely to convey to the gaol of in the said county of , and to deliver him to the keeper thereof ; and we do hereby command you the said keeper to receive him the said C. D. into your custody in the said gaol, and there to detain and keep him until payment shall be made of the aforesaid sum of money, or until he shall be otherwise discharged by due course of law ; and we do hereby further command you the said constable to seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of him the said C. D., to him belonging, wheresoever the same can be discovered and found ; and if the said C. D. shall not pay or satisfy the said sum of money as ought to be done according to the directions of the said several acts, you are forthwith to give notice to us, that we may proceed further as the law directs ; and for so doing this shall be to you and each of you a sufficient warrant and authority.

Given under our hands and seals at in the said district,  
this day of in the year of our Lord 18 .

} Commissioners of assessed taxes  
{ [or, of the property and income tax.]

### No. 71.

*Form of a Warrant to sell a Collector's Estate seized under the foregoing Warrant, Form No. 70.*

To of .

Whereas by a certain warrant, bearing date the day of in the year of our Lord 18 , under the hands and seals of and two of the commissioners of assessed taxes [or of the property and income tax, as the case may be] acting for the district of in the county of , reciting that C. D. of, &c., a collector of the duties of assessed taxes [or as the case may be] for the parish of in the said district, had as such collector collected and received from divers persons within the said parish the sum of in

respect of the said duties, and that the said C. D. had neglected [or refused] to pay the said sum of money, according to the directions of the several acts of parliament in that behalf, and that he had detained and did then detain the same in his hands, the said commissioners whose hands and seals are subscribed and set to the said warrant did thereby command one constable of

in the said county, to seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of the said C. D., to him belonging, wheresoever the same could be discovered and found :

And whereas by virtue and in pursuance of the said warrant the several estates, goods, and chattels belonging to the said C. D., mentioned and particularised in the schedule or inventory hereunder written [or hereunto annexed], have been seized and secured :

And whereas and , commissioners as aforesaid, did, in pursuance of the statute in that behalf, appoint the day of at in the said district for a meeting of the commissioners of assessed taxes [or of the property and income tax] for the said district, and did cause public notice to be given of the time and place when and where such meeting was appointed to be held, ten days at least before such meeting :

And whereas the said meeting hath been held in pursuance of the said notice, and the said C. D. hath not paid or satisfied, as ought to be done, according to the directions of the said acts, the said sum of money so detained by him as aforesaid :

Now therefore we, whose hands and seals are hereunto subscribed and set, being the major part of the said commissioners present at the said meeting, do hereby require and empower you the above-named to sell and dispose of the said estates, goods, and chattels so seized and secured for the cause aforesaid, to satisfy and pay into the hands of the receiver general of stamps and taxes [or, receiving officer of the said duties for the county of ] the aforesaid sum of money so detained by the said C. D., and remaining unpaid as aforesaid, together with the reasonable costs and charges of recovering, raising, and paying the same ; and for your so doing this shall be your sufficient authority.

Given under our hands and seals at in the said district, the day of in the year of our Lord 18 .

{ Commissioners of assessed taxes  
[or, of the property and income tax.]

#### No. 72.

Form of a Warrant under the Act 3 Geo. 4, c. 88, s. 3, to seize the Estate of a deceased Collector who has made default in Payment of Duties collected.

To constable of in the county of .

Whereas it appears to us, and whose hands and seals are hereunto subscribed and set, being two of the commissioners of assessed taxes [or, of the property and income tax, as the case may be] acting for the district of in the county of upon the oath of and other substantial evidence, that C. D., late of a collector of the duties of assessed taxes [or as the case may be] for the parish of in the said district, but now deceased, as herein-after mentioned, hath as such collector collected and received from divers persons within the said parish the sum of in respect of the said duties, and that the said C. D. hath neglected [or, did in his lifetime refuse] to pay the said sum of money, according to the directions of the several acts of parliament in that behalf, and that he hath detained the same in his hands :

And whereas the said C. D. departed this life on the day of without having paid the said sum of money according to the directions of the said acts :

Now therefore we the said commissioners, whose hands and seals are hereunto subscribed and set, do hereby command you the above-named constable to seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of him the said C. D., to him belonging at the time of his death, or which shall or may have descended and come into the hands or possession of the heirs, executors, administrators, or assigns of the said C. D., wheresoever the same can be discovered and found ; and if the aforesaid sum

1. The Acts relating to Management of Commissioners.

Forms.

9 & 10 Vict. c. 56.

1. *The Acts relating to Management of Commissioners.*

of money shall not be paid or satisfied, as ought to be done, according to the directions of the said several acts, you are forthwith to give notice to us, that we may proceed further as the law directs; and for your so doing this shall be to you a sufficient warrant.

*Forms.*  
9 & 10 Vict. c. 56.

Given under our hands and seals at \_\_\_\_\_ in the said district this  
day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_.

{ Commissioners of assessed taxes  
[or, of the property and income tax.]

### No. 73.

*Form of a Warrant to sell a deceased Collector's Estate seized under the foregoing Warrant, Form No. 72.*

To \_\_\_\_\_ of \_\_\_\_\_.

Whereas by a certain warrant, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_, under the hands and seals of \_\_\_\_\_ and two of the commissioners of assessed taxes [or, of the property and income tax, as the case may be,] acting for the district of \_\_\_\_\_ in the county of \_\_\_\_\_ reciting that C.D., late of, &c., a collector of the duties of assessed taxes [or as the case may be] for the parish of \_\_\_\_\_ in the said district, but now deceased, as hereinafter mentioned, had as such collector collected and received from divers persons within the said parish the sum of \_\_\_\_\_ in respect of the said duties, and that the said C.D. had neglected [or, did in his lifetime refuse] to pay the said sum of money, according to the directions of the several acts of parliament in that behalf, and that he had detained the same in his hands; and that the said C.D. departed this life on the \_\_\_\_\_ day of \_\_\_\_\_ without having paid the said sum of money, according to the directions of the said acts, the said commissioners, whose hands and seals are subscribed and set to the said warrant, did thereby command one \_\_\_\_\_ constable of \_\_\_\_\_ in the said county, to seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of the said C.D., to him belonging at the time of his death, or which should or might have descended or come into the hands or possession of the heirs, executors, administrators, or assigns of the said C.D., wheresoever the same could be discovered and found:

And whereas by virtue and in pursuance of the said warrant the several estates, goods, and chattels belonging to the said C.D., mentioned and particularized in the schedule or inventory hereunder written [or hereunto annexed] have been seized and secured:

And whereas \_\_\_\_\_ and \_\_\_\_\_, commissioners as aforesaid, did, in pursuance of the statute in that behalf, appoint the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ in the said district for a meeting of the commissioners of assessed taxes [or, of the property and income tax] for the said district, and did cause public notice to be given of the time and place when and where such meeting was appointed to be held, ten days at least before such meeting;

And whereas the said meeting hath been held in pursuance of the said notice, and the said sum of money so detained by the said C.D. as aforesaid hath not been paid or satisfied, as ought to be done, according to the directions of the said acts:

Now therefore we, whose hands and seals are hereunto subscribed and set, being the major part of the said commissioners present at the said meeting, do hereby empower and require you the above-named \_\_\_\_\_ to sell and dispose of the said estates, goods, and chattels so seized and secured for the cause aforesaid, to satisfy and pay into the hands of the receiver-general of stamps and taxes [or receiving officer of the said duties for the county of \_\_\_\_\_] the aforesaid sum of money so detained by the said C.D., and remaining unpaid as aforesaid, together with the reasonable costs and charges of recovering, raising, and paying the same; and for your so doing this shall be your sufficient authority.

Given under our hands and seals at \_\_\_\_\_ in the said district, the  
day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_.

{ Commissioners of assessed taxes  
[or, of the property and income tax.]

## No. 74.

*Form of public Notice of a Meeting of Commissioners required by 3 Geo. 4, c. 88, s. 3, to be held after the Seizure of a Collector's Estate.*

1. *The Acts relating to Management of Commissioners.*

*Forms.*

9 & 10 Vict. c. 56.

Whereas by a certain warrant, bearing date the                      day of                      under the hands and seals of two of the commissioners of assessed taxes [or of the property and income tax, as the case may be,] acting for the district of                      in the county of                      reciting that C.D. of                      a collector of the duties of assessed taxes [or as the case may be] for the parish of                      in the said district, had as such collector collected and received from divers persons within the said parish the sum of                      in respect of the said duties, and that the said C.D. had neglected [or refused] to pay the said sum of money, according to the directions of the several acts of parliament in that behalf, and that he had detained and did then detain the same in his hands :

The said commissioners did thereby command the constable of                      to whom the said warrant was directed to seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of the said C.D., to him belonging, wheresoever the same could be discovered and found :

And whereas certain estates, goods, and chattels of the said collector have been seized and secured under the said warrant :

Now we the undersigned                      and                      being two of the said commissioners acting in the said district, do, in pursuance of the act of parliament in that behalf, appoint the                      day of                      for a meeting of the commissioners of assessed taxes [or of the property and income tax] for the said district, to be held at                      in the said district, at                      of the clock in the                      noon of the said day ; and we do hereby give notice that if the said sum of money so due and owing from the said collector be not paid or satisfied, as ought to be done, according to the directions of the acts in that behalf, the commissioners present at such meeting, or the major part of them, will sell and dispose of the said estates, goods, and chattels, to satisfy and pay the said sum of money.

Given under our hands, this                      day of                      in the year of our Lord 18                      .

{ Commissioners of assessed taxes  
[or of the property and income tax.]

## No. 75.

*Form of a Deed of Conveyance and Assignment of a Collector's Estate seized under the Act 3 Geo. 4. c. 88, s. 4.*

This indenture, made the                      day of                      in the year of our Lord 18                      , between                      and                      two of the commissioners of assessed taxes [or of the property and income tax] acting in and for the district of                      in the county of                      , of the first part, and                      of the second part :

Whereas by a certain warrant, bearing date the                      day of                      in the year of our Lord 18                      , under the hands and seals of                      and                      two of the commissioners of assessed taxes [or of the property and income tax, as the case may be,] acting for the district of                      in the county of                      , reciting that C. D. of, &c., a collector of the duties of assessed taxes [or as the case may be] for the parish of                      in the said district, had as such collector collected and received from divers persons within the said parish the sum of                      in respect of the said duties, and that the said C. D. had neglected [or refused] to pay the said sum of money, according to the directions of the several acts of parliament in that behalf, and that he had detained and did then detain the same in his hands, the said commissioners, whose hands and seals are subscribed and set to the said warrant, did thereby command one                      constable of                      in the said county to seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal of the said C. D. to him belonging, wheresoever the same could be discovered and found : [If the warrant was issued against the estate of a deceased collector, the above recital should be according to the warrant issued in such case:]

And whereas by virtue and in pursuance of the said warrant the heredita-

1. *The Acts relating to Management of Commissioners.* *ments [or premises, term of years, or property, as the case may be,] hereinafter mentioned, belonging to the said C. D., have been seized and secured :*

*Forms.*

9 & 10 Vict. c. 56.

*And whereas a meeting of the said commissioners of assessed taxes [or of the property and income tax] acting for the said district was held at in the said district on the day of pursuant to public notice, given in conformity with the directions of the statute in that behalf, of the time and place of holding such meeting ; and the said sum of money so due and owing from the said C. D., not being paid or satisfied, as ought to be done according to the directions of the acts of parliament in that behalf, the major part of the said commissioners present at such meeting have sold and disposed of the hereditaments [or premises, terms of years, or property, as the case may be,] so seized and secured as aforesaid, and hereinafter described, to the said for the price or sum of :*

*Now this indenture witnesseth, that in pursuance of and under the authority of the act and acts of parliament in this behalf, and in consideration of the sum of of lawful money of Great Britain paid by the said to the receiver-general of stamps and taxes [or receiving officer of taxes for the county of , as the case may be], as by the certificate of the said receiver-general [or receiving officer] indorsed hereon doth appear, they the said commissioners, parties hereto, do hereby bargain, sell, assign, and convey unto the said , his heirs and assigns [or executors, administrators, and assigns, as the case may be], all that, &c., and all the estate, right, title, &c., of the said C. D. of, in, and to the said hereditaments [or as the case may be] hereby bargained, sold, assigned, and conveyed, or intended so to be, to have and to hold all and singular the premises hereby bargained, sold, assigned, and conveyed, or intended so to be, with their and every of their rights, members, and appurtenances, unto and to the use of the said his heirs and assigns [or to the said his heirs, executors, administrators, and assigns, or as the case may be.]*

*In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year first above written.*

*Note.*—If the defaulter has been collector of the land tax and also of the duties of assessed taxes, the arrears of both the said several rates and duties for which such collector shall have made default may be included in the same warrants, and in such case the several foregoing forms, Nos. 70, 71, 72, 73, 74, and 75, may be used, with such alterations therein respectively as may be necessary or proper for the purpose of adapting the said respective forms to the circumstances of the case.

#### No. 76.

*Form of Warrant under the Act 43 Geo. 3, c. 99, s. 33, to break open a House for the Purpose of levying a Distress for Duties in arrear.*

To the Parish of collectors of the duties hereinafter mentioned for in the district of in the county of .

*Whereas in and by the first [or additional first or supplementary, as the case may be,] assessments of the duties of assessed taxes [or the duties payable under schedule of the act 5 & 6 Vict. c. 35,] for the aforesaid parish, for the year ending the fifth day of April, 18 , A. B. of, &c., hath been duly charged and assessed to the said duties in the sum of :*

*And whereas it appears by the oath of , collector of the said duties appointed for the said parish, taken before us whose hands and seals are hereunto subscribed and set, being two of the commissioners of assessed taxes [or of the property and income tax] acting in and for the district aforesaid, that the said sum of as and for the duties so assessed and charged as aforesaid hath been duly demanded of the said A. B., and that he hath refused and neglected to pay the same [or, as the case may be, that he hath refused and neglected to pay the sum of part of the said sum of ], and that the same now remains due and unpaid :*

*And whereas it further appears by the oath aforesaid that divers goods and chattels, liable by law to be distrained for the said duties, charged and assessed as aforesaid, are lying and being in a certain house, situate, &c., in the*

parish of \_\_\_\_\_ in the district and county aforesaid, now in the possession of \_\_\_\_\_

1. The Acts relating to Management of Commissioners.

These are therefore to authorise and require you the above-named collectors, and either of you, calling to your assistance the constable, tythingman or headborough within and for the parish of \_\_\_\_\_ aforesaid, and in the presence of the said constable, tythingman, or headborough, to demand entrance into the said house, and in case of resistance, or neglect or refusal to open the same, to break open in the daytime the said house, and enter the same, and to distrain therein the said goods and chattels, and the distress there found to keep by the space of four days, at the costs and charges of the said A. B.; and if the whole of the said sum of \_\_\_\_\_, together with the said costs and charges, be not paid within the said four days, then the said distress, having been first duly valued and appraised by two of the inhabitants of the said parish of \_\_\_\_\_, or other sufficient persons, to be sold by you, and the overplus, if any, of the monies arising by such sale, after paying and deducting the said sum of \_\_\_\_\_ and all costs and charges of taking, keeping, and selling the said distress, to be restored to the owner thereof.

Forms.

9 & 10 Vict. c. 56.

Given under our hands and seals at \_\_\_\_\_ within the said district, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_.

{ Commissioners of assessed taxes  
[or of the property and income tax.]

No. 77.

Form of Warrant under the Act 43 Geo. 3, c. 99, ss. 33 and 35, to break open a House for the purpose of levying a distress for the Duties of Assessed Taxes in arrear.

To \_\_\_\_\_ and \_\_\_\_\_ collectors of the duties of assessed taxes for the parish of \_\_\_\_\_ in the district of \_\_\_\_\_ in the county of \_\_\_\_\_.

Whereas in and by a certain certificate, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_, under the hands and seals of two of the commissioners of assessed taxes acting within and for the parish of \_\_\_\_\_ in the district of \_\_\_\_\_ in the county of \_\_\_\_\_ they the said commissioners did certify to the commissioners of assessed taxes acting within and for the parish of \_\_\_\_\_ in the district of \_\_\_\_\_ in the county of \_\_\_\_\_ that in and by the first [or additional first or supplementary] assessments of the duties of assessed taxes for the parish of \_\_\_\_\_ aforesaid, for the year ending the fifth day of April 18 \_\_\_\_\_, A. B., now residing in the parish of \_\_\_\_\_ aforesaid, had been duly charged and assessed in the sum of \_\_\_\_\_ for the duties of assessed taxes in the said certificate mentioned, and that the said A. B. had left unpaid the sum of \_\_\_\_\_ in respect of the said duties so charged and assessed as aforesaid, which had become due and payable on the \_\_\_\_\_ day of \_\_\_\_\_, and that the said last-mentioned sum was then in arrear, and the said commissioners acting within and for the said parish of \_\_\_\_\_ did request the said commissioners acting within and for the said parish of \_\_\_\_\_ to raise and levy the said sum of \_\_\_\_\_ so charged and assessed upon and left unpaid by the said A. B., and then in arrear as aforesaid:

And whereas in pursuance of the said certificate and request the commissioners of assessed taxes acting within and for the parish of \_\_\_\_\_ aforesaid did, by a warrant in that behalf under the hands and seals of two of the said last-mentioned commissioners, duly authorise and require the collectors of the duties of assessed taxes for the said last-mentioned parish to make due demand of and from the said A. B. of the said sum of \_\_\_\_\_ mentioned in the said certificate, and for nonpayment thereof to distrain for the same, according to the directions of the statute in that behalf:

And whereas it appears by the oath of \_\_\_\_\_, collector of the said duties for the last-mentioned parish, taken before us whose hands and seals are hereunto subscribed and set, being two of the commissioners of assessed taxes acting within and for the said last-mentioned parish, that the said sum of \_\_\_\_\_ mentioned in the said certificate to be in arrear and unpaid hath been duly demanded of the said A. B., and that he hath refused and neglected to pay the same [or, as the case may be, to pay the sum of \_\_\_\_\_ part of the said sum of \_\_\_\_\_], and that the same now remains due and unpaid:



1. *The Acts relating to Management of Commissioners.*

*Forms.*

9 & 10 Vict. c. 56.

And whereas it further appears by the oath aforesaid, that divers goods and chattels of the said A. B. are lying and being in a certain house, situate, &c., in the parish of \_\_\_\_\_ aforesaid, now in the possession of \_\_\_\_\_ :  
These are therefore, &c. [Proceed as in form No. 76, from the words "these are therefore" to the end thereof.]

No. 79.

*Form of a Warrant of Commitment under the Act 43 Geo. 3, c. 99, s. 33, for want of a sufficient distress for Duties in arrear.*

To \_\_\_\_\_ and \_\_\_\_\_ collectors of the duties hereinafter mentioned for the parish of \_\_\_\_\_ in the district of \_\_\_\_\_ in the county of \_\_\_\_\_ [or to \_\_\_\_\_ constable, headborough, tythingman, or other officer, as the case may be, of the parish of \_\_\_\_\_ in the county of \_\_\_\_\_], and to the keeper of the common gaol of the said county.

Whereas in and by the first [or additional first or supplementary, as the case may be,] assessments of the duties of assessed taxes [or of the duties payable under the schedule [or respective schedules] of the act 5 & 6 Vict. c. 35,] for the parish of \_\_\_\_\_ in the district of \_\_\_\_\_ in the county of \_\_\_\_\_ for the year ending the fifth day of April 18 \_\_\_\_\_, A. B. of, &c., hath been duly charged and assessed to the said duties in the sum of \_\_\_\_\_.

And whereas it appears by the oath of \_\_\_\_\_, collector of the said duties appointed for the said parish of \_\_\_\_\_, taken before us whose hands and seals are hereunto subscribed and set, being two of the commissioners of assessed taxes [or of the property and income tax] acting in and for the district of \_\_\_\_\_ aforesaid, that the said sum of \_\_\_\_\_ as and for the duties so charged and assessed as aforesaid hath been duly demanded of the said A. B., and that he hath refused and neglected to pay the same [or, as the case may be, to pay the sum of \_\_\_\_\_ part of the said sum of \_\_\_\_\_], by the space of ten days after such demand as aforesaid; and it further appears by the oath aforesaid that the said sum of \_\_\_\_\_ for the duties charged and assessed as aforesaid now remains due and unpaid, and that no sufficient distress can or may be found whereby the same may be levied:

Now therefore we the said commissioners whose hands and seals are hereunto subscribed and set, do hereby command you the above-named collectors of the said duties, or either of you [or you the above-named constable, headborough, tythingman, or other officer, as the case may be], to apprehend the said A. B., and to take him to the common gaol of the said county of \_\_\_\_\_ at \_\_\_\_\_ in the said county, and to deliver him to the keeper thereof, together with this warrant; and we do hereby command you the said keeper to receive him the said A. B. into your custody in the said common gaol, there to be kept, without bail or mainprize, until payment shall be made of the said sum of \_\_\_\_\_ remaining due and unpaid as aforesaid, and also the further sum of \_\_\_\_\_ which we the said commissioners do adjudge to be reasonable for the costs and expenses of apprehending the said A. B., and conveying him to prison.

Given under our hands and seals at \_\_\_\_\_ within the said district, the day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_.

{ Commissioners of assessed taxes  
{ [or of the property and income tax.]

No. 80.

*Form of a Warrant of Commitment under the Act 5 & 6 Will. 4, c. 20, s. 16, for Want of sufficient Distress for the Duties of Assessed Taxes in arrear.*

To \_\_\_\_\_ and \_\_\_\_\_ collectors of the duties of assessed taxes for the parish of \_\_\_\_\_ in the district of \_\_\_\_\_ in the county of \_\_\_\_\_ [or to \_\_\_\_\_ constable, headborough, tythingman, or other officer, as the case may be, of the parish of \_\_\_\_\_ in the county of \_\_\_\_\_], and to the keeper of the common gaol of the said county.

Whereas in and by a certain certificate, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18 \_\_\_\_\_, under the hands and seals of two of the commis-

sioners of assessed taxes acting within and for the parish of \_\_\_\_\_ in the district of \_\_\_\_\_ in the county of \_\_\_\_\_ they the said commissioners did certify to the commissioners of assessed taxes acting within and for the parish of \_\_\_\_\_ in the district of \_\_\_\_\_ in the county of \_\_\_\_\_ that in and by the first [or additional first or supplementary] assessments of the duties of assessed taxes for the parish of \_\_\_\_\_ aforesaid for the year ending the fifth day of April 18 \_\_\_\_\_, A. B., residing in the parish of \_\_\_\_\_ aforesaid, had been duly charged and assessed in the sum of \_\_\_\_\_ for the duties of assessed taxes in the said certificate mentioned, and that the said A. B. had left unpaid the sum of \_\_\_\_\_ in respect of the said duties so charged and assessed as aforesaid, which had become due and payable on the \_\_\_\_\_ day of \_\_\_\_\_ and that the said last-mentioned sum was then in arrear; and the said commissioners acting within and for the said parish of \_\_\_\_\_ did request the said commissioners acting within and for the said parish of \_\_\_\_\_ to raise and levy the said sum of \_\_\_\_\_ so charged and assessed upon and left unpaid by the said A. B., and then in arrear as aforesaid:

And whereas in pursuance of the said certificate and request the commissioners of assessed taxes acting within and for the said parish of \_\_\_\_\_ did, by a warrant in that behalf under the hands and seals of two of the said last-mentioned commissioners, duly authorise and require the collectors of the duties of assessed taxes for the said parish of \_\_\_\_\_ to make due demand of and from the said A. B. of the said sum of \_\_\_\_\_ mentioned in the said certificate, and for nonpayment thereof to distrain for the same, according to the directions of the statute in that behalf:

And whereas it appears by the oath of \_\_\_\_\_, collector of the said duties for the said last-mentioned parish, taken before us whose hands and seals are hereunto subscribed and set, being two of the commissioners of assessed taxes acting within and for the said parish of \_\_\_\_\_, in the district of \_\_\_\_\_ in the county of \_\_\_\_\_ that the said sum of \_\_\_\_\_ mentioned in the said certificate to be in arrear and unpaid, hath been duly demanded of the said A. B., and that he hath refused and neglected to pay the same [or, as the case may be, to pay the sum of \_\_\_\_\_ part of the said sum of \_\_\_\_\_]; and it further appears by the oath aforesaid that the said sum of \_\_\_\_\_ now remains due and unpaid, and that no sufficient distress can or may be found within the district or division of the said commissioners acting within and for the said parish of \_\_\_\_\_ whereby the same may be levied.

Now, therefore, &c. [Proceed as in the form No. 79, from the words "now therefore" to the end thereof.]

1. The Acts relating to Management of Commissioners.

Forms.

9 & 10 Vict. c. 56.

## II. The Acts regulating the Assessments and Collections, &c.

[48 Geo. 3, c. 141; 50 Geo. 3, c. 105; 5 & 6 Vict. c. 37; 7 & 8 Vict. c. 46.]

The subject is arranged under the following heads:—

1. Of the Appointment of Assessors, and when Collectors may act in their place, p. 853.
2. Of Services of Notices, p. 855.
3. Of Certificates of Assessment and Estimates, p. 855.
4. Of Surcharges, p. 857.
5. Rules and Directions for paying to the Receiver-General, and accounting for the Duties received by the Collectors, p. 868.
6. Of the Inspectors-General, p. 871.

The 48 Geo. 3, c. 141, s. 1, reciting, that it is expedient that certain of the powers and provisions for assessing and collecting the duties under the management of the commissioners for the affairs of taxes in Great Britain, should be varied and amended in the particulars hereinafter mentioned, enacts, That from and after the period appointed for the commencement of the rules contained in this clause, all appointments of assessors shall be made, and also all notices

48 Geo. 3, c. 141. Assessors shall be appointed, and duties assessed according to the following rules.

2. *The Acts regulating the Assessments and Collections, &c.*

48 Geo. 3, c. 141.

required to be affixed on any place, or to be delivered to or served on any person or persons for the purpose of returning or estimating the said duties respectively, shall be affixed, delivered, or served, and all assessments of the said duties, or any of them, shall be returned, estimated, ascertained, and made, and the said duties shall be collected, levied, paid over, and accounted for, under and subject to the following rules and directions, which shall be deemed a part of this act, as if the said rules and directions had severally and respectively been inserted herein under a special enactment.

“No. I.—Rules and Directions for appointing Assessors of the Duties under the Management of the Commissioners for the Affairs of Taxes, after the Expiration of the Year 1808.”

Assessors shall be appointed before the 6th of April, yearly.

“First.—It shall be lawful for the respective commissioners acting in the execution of the several acts relating to the said duties respectively, and they are hereby respectively required to appoint assessors for each parish, ward, and place within their respective divisions, before the commencement of each year for which such appointment shall be made, and to do and complete all acts necessary to such appointment, so that the assessors to be appointed may enter on their office on the 6th day of April in each year, pursuing, in all other respects, the directions contained in the said acts respectively in relation to such appointments; which appointments shall be and continue for and during the year to commence on that day, and until other assessors shall be appointed for the same parishes, wards, and places, and for the same duties respectively.”

In default of appointment, assessors for former years shall act.

“Second.—In and for every parish, ward, or place, wherein assessors shall not be appointed before the 6th day of April in each year, to serve for the year ensuing as aforesaid, the last appointment of assessors for the same parish, ward, or place (whether such appointment shall have been or shall be made under any of the acts in force at the time of passing this act, or under this act), shall continue in force until other assessors shall be appointed for the same parish, ward, or place, and for the same duties respectively, according to the directions of the said acts.”

In certain cases the collectors last appointed shall act.

“Third.—In case the assessor or assessors appointed for any former year shall be dead, or be removed from, or be otherwise unfit or incapable to act for the parish, ward, or place for which he or they shall have been appointed, and in default of such appointment of assessors as aforesaid for the year ensuing for the same parish, ward, or place, and for the same duties respectively, then and in every such case the last appointment of a collector or collectors of the same duties for such parish, ward, or place (whether such appointment shall have been or shall be made under any of the acts in force at the time of passing this act, or under this act), shall continue in force until assessors shall be appointed for the same parish, ward, or place, and for the same duties respectively, according to the directions of the said acts; and every such collector shall, in every such case, during such continuance in his office of collector, do, perform, and execute all such matters and things as are directed by the said acts or this act to be done, performed, or executed by assessors; and all parts of the said acts or this act relating to and applied to assessors shall in every such case be construed as applicable to, and be in like manner, and to the like intent, applied to such collectors; and the powers contained in the said acts or this act shall be as fully and amply exercised and practised by such collectors as if the same powers had been expressly given to the said collectors by the said acts or this act.”

Assessors liable to penalties for refusing to act.

“Fourth.—All penalties imposed by any of the acts in force at the time of passing this act, on assessors, for refusing or neglecting to take upon themselves the office of assessor, or to perform their duty therein as prescribed by the said acts respectively, shall be in the like cases imposed on assessors appointed according to this act, for neglecting to take upon themselves the office of assessor, or to perform their duty as prescribed by this act; and every such collector as aforesaid, on whom the duty of assessor shall have devolved in pursuance of this act, shall be subject and liable to the like penalties for the like neglect of duty.”

In certain cases surveyors shall act.

“Fifth.—In every parish, ward, or place, where assessors shall not be appointed in pursuance of this act, or, being appointed, shall not have taken upon themselves the office on or before the commencement of the ensuing

year, or where the assessors or collectors for any former year, on whom the duty of assessor shall have devolved, shall not have taken upon themselves the office of assessor on or before the commencement of such ensuing year, it shall be lawful for the surveyor of the district, and he is hereby required, to execute the duty of assessor for such parish, ward, or place, until assessors shall be appointed who shall duly take upon themselves the said office."

2. *The Acts regulating the Assessments and Collections, &c.*

48 Geo. 3, c. 141.

"Sixth.—In every notice of continuance in office of any assessor or collector, the respective commissioners who shall cause such notice to be given shall require the attendance of such assessor or collector on a day and at a place within the division to be named in such appointment or notice, then and there to receive and take charge of all such notices and papers as shall be delivered to them respectively, for the due execution of the said acts, in manner hereinafter mentioned, which day shall not be later than seven days after the 5th day of April in each year; and, in default of such notice being given by such commissioners, it shall be lawful for the inspector or surveyor of the district to give such notice, and to require the attendance of such assessors or collectors on a day and at a place within the division to be named by the said inspector or surveyor for that purpose."

Attendance of assessors to execute acts.

"No. II.—Rules and Directions for Service of Notices to Persons liable to be charged to the said Duties, or any of them."

"First.—All notices relating to the said duties, or any of them, requiring to be affixed on any place, or to be delivered to or otherwise served on any person or persons for the purpose of returning or estimating the said duties respectively, shall be delivered by the respective surveyors of the districts in which such notices are required (or by the inspectors for the same districts, or by any other inspectors or surveyors of the same duties, duly authorised to take charge of such districts respectively, by or under the commissioners for the affairs of taxes, or any three or more of them) to the respective assessors appointed or acting in pursuance of this act, or to the respective collectors on whom the duty of assessor shall have devolved as aforesaid, for the purpose of serving the same on the respective persons liable to the said duties, in the manner required by the said acts."

Surveyor shall deliver notice-papers to assessors.

"Second.—All such notices shall be delivered to such assessors or collectors as aforesaid, on or as soon after the 6th day of April in each year as the same can be done; and the delivery of such notices by such inspectors or surveyors, or any of them, shall be as effectual as if the same had been delivered by the commissioners of the division according to the directions of the said acts."

Time of delivery.

"Third.—The said assessors and collectors respectively are hereby required to observe such directions as may from time to time be given to them by the said inspectors and surveyors, in all matters touching the time and manner of fixing or delivering or otherwise serving such notices, and the persons on whom the same are to be served, such directions having been previously seen and allowed by the commissioners acting for the division in which the said inspector or surveyor shall act."

Assessors and collectors shall observe the directions of inspectors and surveyors.

"No. III.—Rules and Directions for making and returning the Certificates of Assessment, or Certificates of Estimates, by Assessors acting under the said Acts, and for making and collecting the First Assessments in each Year."

"First.—The assessors of the said respective duties shall deliver their certificates to the respective commissioners on or before the day which such commissioners shall appoint for that purpose yearly, which day so to be appointed for the delivery of the certificates of assessment of the duties of assessed taxes shall not be later than the 20th day of June in each year of assessment; and the day to be appointed for the delivery of the certificates of estimates of property, or profits of professions, trades, and offices, shall not be later than the 20th day of July in the same year, on which days respectively the said assessor shall also deliver to the respective commissioners all the returns or statements relative to the said respective duties made to the said assessors before the respective days so appointed; and all the returns and statements made by the parties to be charged, which shall be delivered after that day, shall be delivered to the respective commissioners."

Time of delivering certificates of assessment.

*2. The Acts  
regulating the  
Assessments and  
Collections, &c.*

48 Geo. 3, c. 141.

For making  
assessments in  
default of return.

First assessment  
shall be made  
without including  
matters of sur-  
charge.

Times of col-  
lection.

Time of delivery  
of duplicates of  
first assessments.

"Second.—In all cases relating to the duties of assessed taxes, where the assessor or assessors shall not have received any return from any person or persons liable to be charged to the said duties, it shall be lawful for such assessor or assessors, and he and they is and are hereby required, to make a true assessment on such person or persons, to the best of his or their information and judgment, of the real charge which ought to be imposed; and in all cases relating to the duty on property, professions, trades, and offices, where the respective assessors shall not have received any statement from any party or parties liable to be charged to the said duties, it shall be lawful for the said assessor or assessors to estimate the property of such parties respectively, and the profits arising from any professions or trades exercised, or any offices held by such parties respectively, according to the best of his or their information and judgment; and in case the said assessor or assessors shall not so estimate the property or profits of any such party or parties who shall not have made a return for that year, then such assessor or assessors shall return to the said commissioners the name and place of residence of every such party; and where the respective commissioners shall also not have received any statement, it shall be lawful for the said respective commissioners to make an assessment on such party or parties either in the said sums respectively, and to the same amount, as the said parties respectively were charged in the last assessment of the said duties for the said division, or according to the best of their judgment, subject to alteration by appeal or surcharge, in the manner directed by the acts relating to the said duties."

"Third.—The first assessments to be made of the said duties or any of them, for any year, shall be made according to the estimates or returns and assessments mentioned in the preceding rule, without including therein any matters of surcharge by the inspectors or surveyors; which first assessments respectively shall be separately and distinctly collected, and shall be contained in the first duplicates to be delivered to the collectors and surveyors for that year, and shall be collected and levied in moieties on the days hereinafter mentioned; that is to say, one moiety of the duties of assessed taxes, if not sooner paid or satisfied according to the directions of the said acts respectively, shall be collected or levied before the 10th day of October, in each year of assessment, or within twenty-one days thereafter, and the other moiety thereof before the 5th day of April following, or within twenty-one days thereafter; and one moiety of the duties on property, professions, trades, and offices, if not sooner paid or satisfied, as aforesaid, shall be collected, levied, or paid before the 5th day of January in each year of assessment, or within twenty-one days thereafter, and the other moiety thereof before the 5th day of July following, or within twenty-one days thereafter: provided always, that nothing herein contained shall be construed to alter the times or proportions at which the said duties are payable, according to the directions of the said acts respectively, or in any way to impeach or affect the powers or provisions of the said acts for the recovery of the said duties at such times and in such proportions as are therein prescribed, and the said respective duties shall be deemed payable quarterly at the times mentioned in the said acts, by four instalments; and it shall be lawful to demand, receive, or levy the same according to the said acts, any thing herein contained to the contrary notwithstanding."

"Fourth.—In order that due time may be given for hearing appeals against such first assessments, the respective commissioners are hereby required and strictly enjoined to deliver, in all cases relating to the duties of assessed taxes, their first duplicates thereof to the respective collectors on or before the 20th day of July in each year, with directions to cause public notice thereof to be given in the parish, ward, or place to which such duplicates relate, to which duplicates in the hands of such collectors all persons interested shall have access, and may examine the same at any reasonable time in the daytime; and in all cases relating to the duties on property, professions, trades, and offices, the respective commissioners shall, as and when they shall make an assessment on any person or persons, cause a notice thereof to be given in the manner directed by the acts relating to the said last-mentioned duties, to the party or parties charged in and by such assessment, within the space of three days after making such assessment, and so from time to time, until all such assessments shall be made, in which certificates shall be inserted the times limited for hearing the appeals therefrom."

"Fifth.—All appeals against such first assessments shall be entered, and due notice thereof given within the respective times hereinafter limited; that is to say, in all cases relating to the duties on assessed taxes, within twenty-eight days after the delivery of the duplicates of the first assessments to the respective collectors of the parishes, wards, or places for which such assessments shall be made; and in all cases relating to the duties on property, professions, trades, and offices, within fifteen days after the date of the notice of such first assessment, to the party or parties charged therewith."

"Sixth.—All appeals against such first assessments of the duties of assessed taxes, in any year, shall be heard and determined between the 20th day of August and the 10th day of September following; and on such day or days, within the time herein limited, as the commissioners of the division shall appoint, whereof they are hereby required to give notice in the manner in which such notices have usually been given in the several parishes, wards, and places in their division; and all appeals against such first assessments of the duties on property, professions, trades, and offices, in any year, shall be heard and determined as soon after notice thereof shall be given to the respective commissioners as conveniently can be done, and for that purpose the said respective commissioners, or two of them at the least, shall meet together within eight days after any such notice of appeal shall have been received by them, and so from day to day or from time to time, at reasonable intervals, with or without adjournment, until all appeals against such first assessment shall be heard and determined, of which day or days of appeal the said respective commissioners shall cause notice to be given to the respective appellants; provided always, that in every case where the party assessed shall be prevented from appealing within the time herein limited, or from attending in person at the time limited for hearing the appeal of such party by absence or sickness, or other sufficient cause, to be proved before the respective commissioners on the oath or solemn affirmation of the party, it shall be lawful for the respective commissioners to enter such appeal after the time herein limited, or to postpone the hearing thereof for such reasonable time as shall be necessary, so that no delay shall be thereby occasioned in the payment or collection of the sums contained in the said first assessment."

"Seventh.—The said respective commissioners shall cause to be delivered to the respective collectors their duplicates of the first assessment, including in such duplicates as well all such matters as have been appealed against and determined by the said commissioners, as all such matters as have been assessed and not appealed against; and all such duplicates shall be delivered within the respective times hereinafter limited; that is to say, the duplicates of the duties of assessed taxes on or before the 20th day of September yearly, and the duplicates of the duties on property, professions, trades, and offices, on or before the 20th day of December yearly, to which duplicates respective warrants shall be annexed for collecting the duties therein contained, within the times respectively before prescribed."

"Eighth.—All such assessments which shall not have been made on or before the 20th day of September, in respect of the duties of assessed taxes, and the 20th day of December, in respect of the duties on professions, trades, and offices, or against which any appeal shall be depending on those days respectively, shall, on the making or determining the same from time to time, be added to such first assessments and to the respective duplicates thereof; and the duties therein, or the moieties thereof which ought to have been previously collected or paid, shall be collected, levied, or paid, on or before such day or days as the respective commissioners shall order by their warrant annexed to the duplicates of such added assessments, such day not being later than twenty-one days after the making such assessment, or determining the appeal thereon."

2. *The Acts regulating the Assessments and Collections, &c.*

48 Geo. 3, c. 141.

Regulating appeals, as to the time of entering them.

Time of hearing appeals.

Time of delivering duplicates of first assessment.

Cases not then determined to be added to first assessment.

#### "No. IV.—Rules and Directions for making and collecting the *Supplementary Assessments* in each Year."

"First.—If any inspector or surveyor shall have surcharged any person or persons for any matter or thing for which a surcharge is allowed by the acts relating to the said duties respectively, it shall be lawful for such inspector and surveyor to deliver his or their certificates of surcharge, explicitly stating the particulars in respect to which such surcharge has been made, to the respec-

Time of making surcharges.

*2. The Acts  
regulating the  
Assessments and  
Collections, &c.*

48 Geo. 3, c. 141.

Time of making  
appeals from sur-  
charges.

Supplementary  
assessments to  
be made on the  
surcharges after  
appeals.

Supplementary  
assessments to be  
paid on the last  
instalment of the  
duties on the first  
assessments.

Assessments not  
completed within  
the time limited  
shall be collected  
in one sum.

Penalty on vexa-  
tious surcharges,  
100*l.* &c.

tive commissioners in respect of the duties of assessed taxes, at any time on or before the 15th day of December in each year of assessment for the whole of such year, and in respect of the duties on property, professions, trades, and offices, at any time after the time herein prescribed for making the first assessments of the said duties for that year, and from time to time until the commissioners shall have completed all the assessments of their division for that year, and shall have delivered, in the manner directed by the said acts, the duplicates thereof, and the same shall have been entered of record, in his majesty's exchequer, which certificates of surcharge shall be signed and allowed by two of the respective commissioners, under the restrictions, and subject to appeal under the conditions prescribed by the said acts respectively."

"Second.—All appeals against such surcharges relating to the duties of assessed taxes shall be heard and determined by the commissioners of the division, or any two or more of them, between the 20th day of January and the 20th day of February following; and all appeals against such surcharges relating to the duties on property, professions, trades, and offices, shall be heard and determined according to the directions of this act before prescribed, in respect of appeals against the first assessments of the same duties by the respective commissioners: provided always, that in every case where the party surcharged shall have been prevented by absence or sickness, or other sufficient cause, to be proved before the respective commissioners on the oath or solemn affirmation of the said party, from appealing within the time herein limited, or from attending in person at the time limited for hearing such appeals, it shall be lawful for the respective commissioners to enter such appeal after the time herein limited, or to postpone the hearing thereof for such reasonable time as may be necessary."

"Third.—The said certificates of surcharge, amended according to the determination of the respective commissioners, shall be a sufficient authority to them, and they are hereby required, to cause supplementary assessments to be made out of the said duties respectively, including therein all matters so surcharged, as well such matters as have not been appealed against, as the matters determined by the said commissioners, which matters shall be severally charged to the said duties respectively, according to the said certificates of surcharge, amended, in cases requiring amendment, according to the determination of the said commissioners, and also including therein the double duties or moieties, or parts thereof assessed, over and above the rates of duty prescribed by the said acts respectively, and also all fines and penalties imposed on any person or persons by the said respective commissioners, within the year of assessment, for offences committed against the said acts or this act; which double duties or moieties, or parts thereof, and penalties, shall severally and respectively be added to such supplementary assessments, and be collected therewith."

"Fourth.—The duties and sums of money contained in the supplementary assessments of each year, which shall be completed within the time herein limited, shall, if not sooner paid or satisfied according to the directions of the said acts respectively, be collected and levied at the respective times hereinbefore appointed for payment of the last instalment of the duties contained in the first assessments of the said duties respectively for that year; and each assessment thereof shall be collected, levied, or paid in one sum."

"Fifth.—In all cases where the said duties, or any of them, shall not have been ascertained and assessed before the respective days appointed by this act for payment of the last instalment thereof, the same respectively shall and may be assessed from time to time, until a complete assessment be made, and shall be collected, levied, or paid in one sum within twenty-one days after notice of the amount contained in the assessment thereof."

"Sixth.—If any inspector or surveyor shall wilfully make any false and vexatious surcharge of any of the duties contained in any of the said acts, or shall wilfully deliver, or cause to be delivered, to the respective commissioners for executing the said acts or any of them, any false and vexatious certificate of surcharge of any of the said duties, every such inspector or surveyor shall be liable to forfeit to the party aggrieved any sum not exceeding 100*l.*, or treble the value of the sum claimed by such surcharge, over and above the rate of duty charged by the said acts respectively, to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster for offences committed in England, and in the Court of Great Sessions

for offences committed in Wales, with full costs of suit; and it shall be lawful for the party aggrieved to sue either for the said penalty of 100*l.* or for the said treble value under this act, at his or her election; and it shall also be lawful for the judge before whom such inspector or surveyor shall have been convicted of such offence in any such suit, either for the said penalty or treble value, or any part thereof by indorsement on the *postea*, or for the court before whom such inspector or surveyor shall be convicted, by entry on the record, to certify his or their satisfaction with such conviction; and in every such case the said certificate shall be an authority to the commissioners for the affairs of taxes, and they are hereby required to cause to be paid by the receiver-general of the county, riding, or division wherein such conviction was had, out of any monies of the said duties respectively in his hands, such reasonable expenses as the plaintiff shall have incurred, over and above the costs of suit as aforesaid, the amount thereof being certified by the proper officer for taxing costs of the court in which such suit shall be commenced, to have been necessarily expended, and allowed by such officer as between attorney and client; and every such inspector and surveyor shall, after such conviction, be discharged from his employment."

2. *The Acts regulating the Assessments and Collections, &c.*

48 Geo. 3, c. 141.

By 50 Geo. 3, c. 105, s. 1, reciting that "it is expedient that certain of the powers and provisions contained in any act or acts relating to the duties of assessed taxes, or to the duties arising from the profits of property, professions, trades, and offices, should be amended in the particulars hereinafter mentioned," it is enacted, "That, from and after the passing of this act, the several surveyors and inspectors appointed or to be appointed by his majesty in pursuance of the said acts, to carry into execution the powers therein given to them, in that part of Great Britain called England, shall, in making any increase of duty either on the returns of parties or the estimates of assessors or the assessments made by commissioners under the said acts, observe the following rules and directions for their government, and shall be subject to the several provisions therein contained; which rules and directions shall be of the like force and effect as if the same were herein inserted under a special enactment."

50 Geo. 3, c. 105.  
As to surcharges.

"Rules and Directions for making Objections and Charges, and for limiting the Times of making the same in certain Cases, in that part of Great Britain called England."

"First.—Every surveyor and inspector appointed or to be appointed, in pursuance of the said acts, or any of them, shall be, and they are hereby empowered and strictly enjoined and required to inspect and examine all and every the returns of lists, statements, declarations, accounts, or estimates made by any person or persons chargeable to the said duties, or any of them, or by any assessors of any of the said duties, according to the directions of any act or acts before mentioned, and also all and every the first assessments of the said duties, or any of them, made for any parish, ward, or place, for any year, as well before as after the respective commissioners acting in the execution of the said acts respectively shall have signed and allowed the first assessments made for such parish, ward, or place, for that year; and if he or they shall discover any error or wrong amount or computation of duty therein, or that any person who ought to be charged with the said duties, or any of them, shall have duly made a return as required by the said acts respectively, but shall have been omitted to be charged with the said duties, or any of them, or shall be under-rated in the said first assessment and that the said return doth contain matters sufficient, whereby the said surveyor or inspector may rate such person, in the said first assessment to the full duties chargeable upon him or her, according to, or by or from such return, it shall be lawful for the said surveyor or inspector, and they respectively are hereby required, before such allowance, to correct and amend such assessments, and to charge such person to the full amount and at the full rate of duty at which he or she ought to be charged, according to his or her return so delivered."

Surveyors, &c. to examine returns and assessments, and amend them, &c.

"Second.—If any such surveyor or inspector shall, after any such assessment or assessments in respect of the duties of assessed taxes shall be signed and allowed by the said commissioners, or if any such surveyor or inspector shall, after such assessment or assessments in respect of the duties arising from the profits of property, professions, trades, or offices, shall be signed or

After allowance of assessments surveyor to certify omissions to commissioners, by way of surcharge.



2. *The Acts regulating the Assessments and Collections, &c.*

50 Geo. 3, c. 105.

On delivery of certificate, and oath made that notice was given, commissioners to allow certificates.

Lists to be delivered to surveyors, and assessments produced for taking copies.

Notice to persons charged.

In what case delivery of certificate of surcharge to clerk sufficient.

Certificate sufficient proof of contents of notices.

allowed by the commissioners acting for the general purposes of the acts relating to the said duties, find or discover, upon his survey or examination, or otherwise, that any person liable to the said duties, or any of them, in respect of which, such lists, statements, accounts, or estimates, as aforesaid ought to have been delivered, hath not made any return as by the said act or acts is required, or hath omitted any person, or any property, or profits, or the amount or value thereof, or any article, matter, or thing, or any description of the same which ought to have been returned, or hath not returned the full amount or value of any property or profits, as required by any of the said acts, so that he or she shall not, on account of such default or omission, have been charged to the amount which ought to be paid by him or her, or that any exemption, allowance, or deduction which is not allowed by the respective acts relating to the said duties, shall have been claimed in or by such return, then, and in every such case, it shall be lawful for the said surveyor or inspector to certify the same in writing, together with an account of every such default, omission, or claim, with the name or description of the person or thing not returned or omitted, to the best of his knowledge and belief, and the full amount of the single duty by which the assessment ought to be increased, explicitly stating the particulars in respect of which such charge has been made, and to deliver the same to any two or more of the said commissioners for putting in execution the said acts respectively, or to their clerk, in order to have such default, omission, or claim, and the under-rate occasioned thereby, rectified; and such commissioners are, upon the delivery of any such certificate, and upon oath being first made either by the inspector or surveyor, or any other credible witness or witnesses who shall have served the same, that a notice to the effect hereinafter mentioned was duly served, required to sign and allow the said certificates, and to cause supplementary assessments to be made according to such certificates, subject to appeal as hereinafter is allowed."

"Third.—Every person in whose custody any such lists, statements, accounts, or estimates shall be, shall, and is hereby required, upon the request of any such surveyor or inspector as aforesaid, to deliver the same into his custody for the purposes aforesaid, taking his receipt for the same; and every person in whose custody any such assessment shall be, shall and is hereby required, upon the request of such surveyor or inspector as aforesaid, to produce the same; and such surveyor or inspector is hereby authorised to take charge of the same, until he shall have taken such copies of or extracts from the same as may be necessary for his and their better information."

"Fourth.—The said inspectors and surveyors shall give, or cause to be given, to every person so charged, or leave, or cause to be left, as his or her last or usual place of abode, in the district where such charge was made, or on the premises charged with the assessment, as the case shall require, and as shall have been directed by the several acts relating to the said duties respectively, notice in writing of such charge, and of the amount of duty to be included in the certificate of such charge and the particulars thereof which charges the said inspectors and surveyors are hereby empowered to make, at or before such times as are directed by the said acts, or this act, for the delivery of the certificates of such charges to the said respective commissioners."

"Fifth.—In default of a meeting of the said respective commissioners before the time limited by the said acts, or this act, for the hearing of any appeals from the charges of the said surveyor or inspector, or if the said surveyor or inspector shall not have had notice of a meeting of the said respective commissioners, it shall be lawful for the said commissioners, and they are hereby required, at their first meeting to be held thereafter, to sign and allow the said certificates, and afterwards to hear and determine all appeals therefrom."

"Sixth.—The certificate delivered to the commissioners, containing the day or days of service of the notice delivered to the party charged, shall be deemed sufficient proof of the contents thereof, unless the contrary be shown on the production of such notice to the said respective commissioners by the party charged; and no proof of the contents of any such notice shall be required by the said commissioners to be given to them, either by a copy thereof or otherwise, previous to their signing or allowing the said certificates, nor upon appeal therefrom, nor other proof in any matter relating to the same, except as aforesaid; and except the oath of the person or persons who shall have served such notices as hereinbefore directed, and which shall be in the form and to the effect following; (that is to say,)

'J, A. B., do swear that a notice in writing was duly served upon each person mentioned in the above certificate, containing the particulars as set forth therein respectively, on the day or days mentioned in the said certificate.'"

2. The Acts regulating the Assessments and Collections, &c.

"Seventh.—No assessment made or to be made by any assessor or assessors of the said duties respectively, nor any charge made or to be made by any surveyor or inspector upon such assessment, shall be impeached or affected by reason of any mistake in the christian or surname, or either of them, of any person liable to any of the said duties, nor by reason of any mistake in the description of any property or profits, or of any servant or person, or of any article, matter, or thing for which the person so charged shall be liable to any of the said duties, nor by reason of any mistake in the amount of the duty charged, nor by any variance between the notice and the certificate of charge, whether such mistake shall appear in, or such variance shall arise from the notice and certificate to be delivered or made in such case, or in either of them; but that all such assessments and charges shall be valid and effectual, to all intents and purposes, notwithstanding any such mistake or variance; provided, that in cases of charge, the notice thereof be duly served on the person intended to be so charged, and such notice and certificate do severally contain in substance and effect the several particulars on which such charge shall have been made; and every such charge shall be heard and determined on the merits, in such manner as in the said acts or in this act is directed."

50 Geo. 3, c. 105.  
Oath.

Assessments or charges not to be impeached for mistakes in names or descriptions.

"Eighth.—It shall be lawful for any person to whom such notice of charge shall be given as aforesaid, on occasion of his or her having neglected to make any return as required by the said act or acts, at any time previous to the time appointed for hearing appeals next after the delivery of such notice, to make out and deliver to the surveyor or inspector who shall have delivered the notice of charge, a true, perfect, and complete list, statement, account, or estimate of all matters and things required by the said act or acts to be returned; so that he or she may, from such last-mentioned list, statement, account, or estimate so to be delivered, be charged to the said duties respectively the full sum at which he or she ought to be charged by virtue of the said act or acts; provided, that to every such list, statement, account, or estimate there shall be annexed a declaration in writing in the form and to the effect hereinafter mentioned; and if the said surveyor or inspector shall be satisfied with such list, statement, account, or estimate, and the declaration annexed thereto, then he shall certify such return and declaration annexed thereto to two or more of the said commissioners, with the amount of the duty to be charged, who shall thereupon cause the assessment to be made according to such certificate, and the same rate of single duty, as set forth in the said several acts respectively, to be charged on the person making such return without further trouble or delay; but if, upon examination of such list or return, and declaration annexed thereto, the said surveyor or inspector shall see just cause to object thereto, he shall thereupon certify such return and declaration annexed thereto, together with the cause of his objection, to two or more of the said commissioners, who shall thereupon cause the assessment to be made according to such last-mentioned certificate in double the amount of the duty at which he or she shall be charged, and from which charge no abatement shall be made on any pretence, unless on appeal as hereinafter is directed; of which objection notice shall be given by the surveyor or inspector to the person to be charged thereby, together with the cause of his objection to the said return and declaration to be annexed thereto; and the said commissioners shall determine the said objections on the merits, without further notice of appeal from the party so charged."

How double duty avoided, when no return made.

Surveyor may certify same, and party shall be charged at single duty.

If dissatisfied may state objection.

Notice of objection.

"Ninth.—Every such declaration, in cases where no return hath been previously made by the person so charged for the same year, shall allege and declare in substance, or to the effect as follows; (that is to say) that he or she, the said exhibitant, was not at his or her dwelling-house, or other place of abode, at the time appointed for the fixing or delivery of general or other notices for making a return as required by the said act or acts, nor between that day and the time limited for making such return to the assessor, and that he or she hath not received or had any knowledge of any such notice; or, that he or she was disabled by sickness from making such return; or, that the non-delivery of such return was occasioned by the following mistake or accident, without any intention to defraud the revenue, *videlicet* [here set forth the cause of such default]; and that the return to which the declaration of the said

Declaration to contain satisfactory excuse of party, and to be attested by credible witnesses.

*2. The Acts regulating the Assessments and Collections, &c.*

50 Geo. 3, c. 105.

How, on charges for omission in return, double duty may be avoided.

Charge made in single duty, unless surveyor certify objection.

Form of declaration in cases of charge for defective returns.

No declaration required, if party give notice to surveyor that his return is correct, &c.

exhibitant is annexed is a full, perfect, and complete return of all matters and things required of the said exhibitant by the said act or acts, or by this act, to the best of his or her judgment and belief; which declaration and return shall severally and respectively be signed by the party making the same, in the proper name and hand-writing or sign of the said party, attested by any one or more credible witness or witnesses, who shall have seen the said party subscribe or sign the same, and shall attest the signature thereof in the proper names and hand-writing of the said witness or witnesses respectively; provided every such witness shall be an inhabitant of the same ward, parish, or place where the said party shall reside, and who shall be rated in the assessment of the same duties for the same ward, parish, or place aforesaid, or if in any place there shall be no inhabitant competent to be such witness, then the said declaration shall be attested by some credible witness rated as aforesaid, and residing in the next adjoining parish where the said party shall reside."

"Tenth.—It shall be lawful for any person to whom such notice of charge shall be served, on occasion of his or her having omitted in the return before made for the same year, any person, property, profits, description, statement, account, or estimate, or any article, matter, or thing which ought to have been contained in such former return, or which shall be mentioned in such notice of charge not to be contained in such former return, or of having claimed any exemption, allowance, or deduction, not allowed by the said act or acts respectively, or of having returned the amount or value of any property or profits at less than the sum which ought to be returned according to the said acts respectively, if he or she shall consent or agree to such charge, to give notice in writing of his or her consent accordingly to the said surveyor or inspector; and the said surveyor or inspector shall certify such consent, and the amount of the single duty which ought to be charged, to the said commissioners, according to which certificate the party charged, and consenting thereunto, shall be assessed in the single duty, and such consent shall be deemed equivalent to an amended return and declaration, as required by this act; or such person so charged, if he or she shall not so consent or agree in manner aforesaid, may amend such former return, by delivering to the surveyor or inspector as aforesaid, a supplementary list, statement, account, or estimate, according to the directions of the said acts respectively, and as the case may require, to which a declaration in writing shall be annexed, to the effect hereinafter mentioned; and the said surveyor or inspector shall be at liberty to certify his satisfaction therewith, or his objection thereto, to the said respective commissioners; according to which certificate the party charged shall be assessed in the single duty if such surveyor or inspector shall be satisfied therewith, or in the double duty in the manner hereinbefore directed in cases where no previous return shall have been made, and as the case may require, subject to the like power of appeal from such objection, and to the like proceedings in all other respects as are before given."

"Eleventh.—Every such last-mentioned declaration shall allege and declare the grounds and cause of each omission made or mentioned in such notice of charge to have been made in such former return, and also the grounds and cause of each claim of exemption, allowance, or deduction, and also that the return to which the said declaration is annexed is a full, perfect, and complete return of all matters and things required of him or her by the said act or acts, or by this act, to which the said charge shall relate, to the best of his or her judgment and belief, and that such omission or claim was not made with intention to defraud the revenue; which said last-mentioned declaration and return shall severally and respectively be signed and attested in the manner before directed in cases of other declarations and returns before mentioned."

"Twelfth.—No return or declaration shall be required of any property, profits, article, matter, or thing of which the party charged shall have made a due return for the same year, but the said party shall be at liberty to give notice in writing to the said surveyor or inspector that he or she doth abide by such former return: or may make out and deliver a supplementary return and declaration in the manner before directed; which return and declaration, together with the return before made, subject nevertheless to the objection of the said surveyor or inspector in manner aforesaid, shall be deemed full, perfect, and complete returns, if the same shall together include all articles, matters, and things, for which the party so charged shall be chargeable; and no person shall be liable to the penalties contained in this

act for any article, matter, or thing which shall have been returned by him or her in manner aforesaid, so that he or she might have been fully charged to the said respective duties chargeable thereon, but only for such articles, matters, or things which shall not have been returned by him or her in manner aforesaid."

"Thirteenth.—If any surveyor or inspector shall wilfully make any false and vexatious charge of any of the said duties, or shall wilfully deliver or cause to be delivered to the respective commissioners for executing the said acts or any of them, any false and vexatious certificate of charge of any of the said duties, or any false and vexatious certificate of objection to any supplementary return, or shall be guilty of any fraudulent, illegal, or unjust conduct, in the prosecution of any charge of any of the said duties, or shall wilfully neglect the duty of his office, or in any manner offend against the laws for regulating the duty of his said office, and the same shall be proved on the certificate of the said respective commissioners of the division where such offence shall be committed, or any two or more of them, or on the affidavit on oath, or solemn affirmation, to be taken before any one of the said respective commissioners, of any credible person or persons, to the satisfaction of the commissioners for the affairs of taxes, or any two or more of them, or by the confession of the said surveyor or inspector, it shall be lawful for the said commissioners for the affairs of taxes, for any such offence, to suspend the payment to the said surveyor or inspector of all or any reward, emolument, or advantage, which the said surveyor or inspector would be entitled to under the said acts or any of them, for any increase of duty or overplus above the rate of duty occasioned by the information or charge of the said surveyor or inspector, or such part thereof as the said commissioners for the affairs of taxes shall deem just and necessary, and finally to withhold the same, and direct the same to be paid by the receiver-general into his majesty's receipt of exchequer; unless the lords commissioners of his majesty's treasury shall think fit to restore the same to the said surveyor or inspector, or to mitigate and lessen the sum so to be withheld and paid over into his majesty's exchequer: provided always, that nothing hereinbefore contained shall be construed to impeach or affect any action or suit for the recovery of any penalty or penalties imposed by any former act or acts, against such surveyor or inspector for any such offence or offences as aforesaid, or for any false and vexatious charge of any of the said duties; but all such penalties, and the powers for recovery thereof, shall be and remain in force, notwithstanding the powers of this act, or any act or thing done in pursuance thereof."

"Fourteenth.—Where any person or persons, thinking himself, herself, or themselves respectively overcharged or over-rated by any charge or certificate of objection by any surveyor or inspector as aforesaid, or by any assessment to be made by virtue or in pursuance of such charge or certificate, shall have appealed therefrom to the said commissioners, according to the directions of the said acts respectively, the appellant shall, upon the hearing such appeal, in all cases where a list, statement, account, or estimate in writing, shall or ought to have been delivered by the said appellant to the assessor, produce, or cause to be produced, before the said commissioners, a true, perfect, and complete list, statement, account, or estimate, as the case may require, to the best of the judgment and belief of the said appellant, with a declaration in writing thereunto annexed, to the effect hereinafter mentioned; (that is to say,) the said appellant shall declare that the list, statement, account, or estimate, to which the said declaration is annexed, doth contain all matters and things required of the said appellant to be returned by him or her, for which he or she is chargeable by virtue of any act or acts, to the best of his or her judgment and belief; which return and declaration shall severally and respectively be signed by the said appellant in the proper name and handwriting of the said appellant; and in default of the production of such list, statement, account, or estimate, by or on behalf of the said appellant, with such declaration annexed, the said commissioners shall confirm the charge or objection against which such appeal was made."

"Fifteenth.—Upon every charge allowed or confirmed by the respective commissioners, in the whole or in part, upon which any increase of duty shall be made, the assessments thereupon shall be made in double the amount of duty which shall have been charged in the supplementary assessments on occasion of such charge, unless where the same is otherwise provided for by this act."

2. *The Acts regulating the Assessments and Collections, &c.*

50 Geo. 3, c. 105.

Vexatious charge, &c.

Proviso.

Production of lists, &c.

Charges confirmed in default of production.

Assessments made in double duty, &c.

*2. The Acts  
regulating the  
Assessments and  
Collections, &c.*

50 Geo. 3, c. 105.

In what case  
double duty  
remitted.

Double duty  
remitted where  
default has been  
corrected by  
return.

Moiety of double  
duty remitted  
where default not  
fraudulent.

In what case the  
whole of double  
duty remitted, &c.

In what case no  
double duty.

Reward to officers.

Charges not to be  
made after objec-

"Sixteenth.—Where an amended return with a declaration annexed thereto, shall not be delivered to the surveyor or inspector, and where no list, statement, account, or estimate with such declaration annexed as aforesaid shall be produced to the said commissioners on the hearing of such appeal, it shall not be lawful for the said respective commissioners to make any abatement, defalcation, or remission of the said double duty or any part thereof, but the same shall stand good and remain part of the annual assessment; unless the party charged shall have given notice of his or her consent to the charge of the said surveyor or inspector, or unless the said respective commissioners shall be of opinion that the said surveyor or inspector was or were enabled to correct or amend the first assessments of the said duties for that year, according to the directions of this act, by means of or by reference to the original return of the party so charged, in which cases it shall be lawful for the said commissioners who shall have confirmed such charge at the same time to remit and strike off the whole of the said double duty."

"Seventeenth.—Upon every charge confirmed upon appeal, if the said commissioners shall, after examination of the appellant, or by other lawful evidence produced on his or her behalf, as directed by the said acts respectively, be of opinion that the alleged default, neglect, omission, or claim of exemption, allowance, or deduction, hath been duly accounted for, and that the cause or causes have been truly stated in any amended return and annexed declaration, and that the appellant had a just or reasonable cause of controverting the said charge, and that the said default, neglect, omission, or claim of exemption, allowance, or deduction, was not wilfully made and with intention to defraud the revenue, it shall be lawful for the said commissioners who shall have determined the said appeal, although they shall have confirmed the charge in part or in the whole, at the same time to remit and strike off the whole of the double duty."

"Eighteenth.—Upon every charge confirmed upon appeal, although no amended return shall have been delivered to the surveyor or inspector as allowed by this act, if the said commissioners shall, after examination of the appellant, or by other lawful evidence produced on his or her behalf, as directed by the said acts respectively, be of opinion that the alleged default, neglect, omission, or claim of exemption, allowance, or deduction, was not wilfully made, and with intention to defraud the revenue, it shall be lawful for the said commissioners who shall have determined the said appeal, at the same time to remit and strike off any part of the said double duty, not exceeding one moiety thereof; provided that in every such case, if the appellant shall prove to the satisfaction of the said commissioners that he or she hath been prevented from making such amended return within the time herein limited, by absence or sickness or other sufficient cause, and that such default, neglect, omission, or claim as aforesaid, was not wilfully made, and with intention to defraud the revenue, it shall be lawful for the said commissioners to remit and strike off the whole of the said double duty."

"Nineteenth.—Nothing herein contained shall be construed to grant the double duty, or any part thereof, on any of the said duties, if the party charged shall not, by the laws in force at and immediately before the passing of this act, be directed to return the article, matter, or thing on which the said duties shall be chargeable, and for which the said party was so charged."

"Twentieth.—Every increase of duty made by occasion of such charges, whether the whole of the double duty shall be remitted or not, and also the double duty, or such part thereof which shall not be remitted, shall be certified on the supplementary assessments to be made for each year, under the hands of the said respective commissioners or any two of them, to the commissioners for the affairs of taxes; and the said commissioners for the affairs of taxes shall have authority to direct the receiver-general who shall have received the said increase and double duty, to pay to the said surveyor and inspector out of the same, in such proportions as they shall think proper, or to either of them, as they see fit, any sum of money not exceeding the rate which shall have been settled by the lords commissioners of the treasury, or the high treasurer for the time being, as a reward for their labour and diligence in making such increase of duty; and the certificate of the said commissioners for the affairs of taxes, or any three or more of them, shall be a warrant to the said receiver-general to pay the same."

"Twenty-first.—The determination of the commissioners acting for the general purposes of the acts relating to the duties arising from the profits of

property, professions, trades, or offices, upon any objection made by the surveyor or inspector of the said duties to the estimate or value of any property, or to the estimate of the profits of any profession, trade, or office on which any assessment after appeal shall be made, shall be construed to preclude any surveyor or inspector from afterwards making a further charge on the same person or persons for the same property or profits for the same year of assessment; and, in like manner, the determination of the commissioners upon every such objection to the estimates or value delivered by the assessors of the property in any parish, ward, or place in which assessments after appeal shall be made, shall preclude the surveyor or inspector from afterwards making a further charge on the same property in the same parish, ward, or place in that year."

"Twenty-second.—The objection of any surveyor or inspector to the estimate or estimates of any person or persons, or of the assessor or assessors of any parish, ward, or place, or to any assessment or assessments of additional commissioners in pursuance of the said last-mentioned acts, in relation to the duties arising from the profits of property, professions, trades, and offices, shall not be construed to preclude any surveyor or inspector from afterwards charging the same person or persons for any other property, or the profits of any other profession, trade or office not included in the estimate or estimates, assessment or assessments before objected to, and determined as aforesaid; nor to preclude any surveyor or inspector from afterwards objecting to any other estimate or estimates, or assessment or assessments, or from afterwards charging any other person or persons in the same parish, ward, or place, or in any other parish, ward, or place in the same or any other division, in respect of any property, or the profits of any profession, trade, or office, not before objected to and determined as aforesaid; and the respective commissioners acting for the general purposes of the said last-mentioned acts are hereby strictly enjoined and required to sign and allow such last mentioned objections and charges according to the directions of the said acts, in respect of the powers therein given to such surveyor and inspector; provided, that all such objections and charges be made within the times herein respectively limited."

"Twenty-third.—From and after the passing of this act, every objection to the estimates directed to be made by the said last-mentioned acts, in relation to the duties arising from the profits of property, professions, trades, or offices, shall be made before the first assessments on such estimates shall have been signed and allowed by the commissioners for the general purposes of the said acts, and not afterwards."

"Twenty-fourth.—No charge upon any assessment under the said last-mentioned acts, in relation to the duties arising from the profits of property, professions, trades, or offices, shall be allowed or signed, unless the certificate thereof shall be delivered to the respective commissioners before the expiration of three calendar months after the 5th day of January in the year of such assessment, in case such assessment shall have been made on or before the said 5th day of January, or, if such assessment shall not then have been made, unless the certificate of charge thereon shall be delivered to the said commissioners within three calendar months after such assessment shall have been made, except in the cases hereinafter mentioned."

"Twenty-fifth.—If any person or persons shall have neglected to make a return of property or profits as required by the said last-mentioned acts, and no estimate of the said property or profits, nor any assessment, shall be made thereupon for any year, it shall be lawful for the surveyor or inspector on discovery thereof at any time within twelve calendar months after the expiration of the year when such return ought to have been made to charge such person or persons to the amount which ought to have been returned, in like manner as such persons might have been charged within the year of assessment; and the like proceedings shall be thereupon had as if such discovery and charge had been made within the year of assessment; and every assessment thereupon made shall be added to the current assessments of the parish, ward, or place, in the manner herein directed."

"Twenty-sixth.—If any person or persons shall by any falsehood, wilful neglect, fraud, covin, or contrivance whatever, escape from taxation for the profits of any distinct property, profession, trade, or office, for any year, it shall be lawful for the surveyor or inspector, within the like period of twelve calendar months as aforesaid, to charge such person or persons to double the amount of

2. *The Acts regulating the Assessments and Collections, &c.*

50 Geo. 3, c. 105.  
tions to estimates  
of same property.

Except in certain cases.

Objection to be made before assessment.

Charges to be made in a limited time.

Within what time omissions to charge may be supplied.

Double charge case of fraud.

2. *The Acts regulating the Assessments and Collections, &c.*

50 Geo. 3, c. 105.

Provisions relating to charges in single duty, and to surcharges in double duty, to be applicable to the provisions of 43 Geo. 3, c. 161, and 46 Geo. 3, c. 65, &c.

Repugnant provisions in other acts repealed.

Commissioners made defendants in any information, &c. entitled to costs as between attorney and client.

duty which ought to have been charged in the year of assessment upon such distinct property, profession, trade or office; and upon proof of such falsehood, wilful neglect, fraud, covin, or contrivance, to the satisfaction of the commissioners to whom such charge shall be certified, the assessment on the said double duty shall stand good, and be added to the supplementary assessments of the current year of the parish, ward, or place: and no part thereof shall be remitted on any pretence whatever."

Sect. 2. That the several provisions in the preceding clause of this act, relating to charges in the single duty as aforesaid, shall be construed, so far as the same respect the duties of assessed taxes in that part of Great Britain as aforesaid, as applicable to the provisions of 43 Geo. 3, intitled "An Act for repealing the several Duties under the Management of the Commissioners for the Affairs of Taxes, and granting New Duties in lieu thereof, for granting New Duties in certain Cases therein mentioned; for repealing the Duties of Excise on Licences, and on Carriages constructed by Coachmakers, and granting New Duties thereon, under the Management of the said Commissioners for the Affairs of Taxes; and also New Duties on Persons selling Carriages by Auction or Commission;" and any other act or acts for regulating the said duties respectively, and relating to surcharges in the double duty, and as far as the said provisions respect the duties arising from the profits of property, professions, trades, and offices in that part of Great Britain as aforesaid, the same shall be construed as applicable to the provisions of 46 Geo. 3, intitled "An Act for granting to his Majesty during the present War, and until the Sixth Day of April next after the Ratification of a Definitive Treaty of Peace, further additional Rates and Duties in Great Britain on the Rates and Duties on Profits arising from Property, Professions, Trades, and Offices; and for repealing 45 Geo. 3, for repealing certain parts of 43 Geo. 3, for granting a Contribution on the Profits arising from Property, Professions, Trades, and Offices; and to consolidate and render more effectual the Provisions for collecting the said Duties;" and any other act or acts for regulating the said duties respectively, and relating to surcharges in the double duty, and as if the said provisions in the said clause of this act relating to charges in the single duty had been expressly applied to the provisions of the said acts respectively relating to surcharges in the double duty, and had been respectively enacted therein; and all provisions, clauses, matters, and things in the said several acts respectively, which are repugnant to the provisions in the said clause of this act, and for which other provisions are made in this act, except such provisions, clauses, matters, and things therein as relate to surcharges in the double duty which are herein declared to be applicable to the provisions of this act, shall severally cease and determine.

Sect. 3. That in case any commissioner or commissioners acting in the execution of any such act or acts herein mentioned, or of this act, shall, by information, or other process or proceedings whatsoever at the suit or on the behalf of his Majesty, his heirs or successors, be proceeded against or impleaded for or by reason of any matter or thing he or they may do or determine, or may refuse or omit to do in or about the execution of any such act or acts, and upon the trial of such information or other process, a verdict shall be given, or any order or rule of court shall be made for such commissioner or commissioners, or such information or other process or proceeding shall be discontinued or withdrawn, or dismissed the court in which they shall have been prosecuted, then, and in either of the said cases, such commissioner or commissioners shall be entitled to his or their full costs of suit, to be taxed by the proper officer of such court as between attorney and client; and it shall be lawful for the commissioners for the affairs of taxes to direct the receiver general of the county within which any such commissioner or commissioners shall act, and the said receiver-

general is hereby required, to pay such taxed costs out of any money in his hands arising from the duties of assessed taxes, and which shall be allowed in the accounts of the said receiver-general.

Sect. 6. That no person who shall in the year 1810, or in any year, have made out, signed, and delivered in the manner directed by the said last-mentioned act, 43 Geo. 3, or shall in any future year make out, sign, and deliver in like manner, lists of the greatest number of servants or other male persons retained or employed, and of carriages, horses, mules, and dogs kept by such person, or of having worn or used hair powder, or any armorial bearings or ensigns, in the course of the year ending on the fifth day of April preceeding the delivery of such list, and who shall continue to retain or employ the like number and description of servants or other male persons, and keep the like number and description of carriages, horses, mules, and dogs respectively, or wear or use hair-powder, or armorial bearings or ensigns, in the like manner, subject to the like duty as in the year to which such list related, and in the same ward, parish, or place, shall be obliged to make out, sign, and deliver such lists, or either of them, in any succeeding year, nor be subject or liable to any penalty for omitting or neglecting so to do, so long as such person shall continue to reside in such ward, parish, or place, and shall not be chargeable in any other ward, parish, or place, for any servant, carriage, horse, mule, or dog kept by such person: Provided always, that such person shall in each year deliver or cause to be delivered to the assessor or assessors of the ward, parish, or place, notice in writing that he or she is desirous of being charged for the same articles, matters, and things as in the preceeding year; and every such notice shall be an authority for the said commissioners to charge such person in the first assessments for that year for the same articles, matters, and things respectively, for which such person stood charged in the assessments of the preceeding year.

Sect. 7. That in all cases of charge by any surveyor or inspector as aforesaid, of any of the duties on servants, carriages, horses, mules, and dogs, and for using hair-powder or armorial ensigns, where it shall be proved, on appeal, to the satisfaction of the said commissioners acting for the division, that there was any doubt whether the article or articles so charged was or were rateable within the meaning of the said acts, or any of them, and that the omission thereof or alleged default was not wilfully made, and with intention to defraud the revenue, it shall and may be lawful for such commissioners to remit or strike off the whole of the double duty chargeable on the person or persons so charged.

Sect. 8. That every person to be charged in pursuance of this act, by the certificates of any surveyor or inspector, shall have the full period of ten days after service of the notice of such charge, to deliver his or her amended return to such surveyor or inspector, according to the directions of this act, and no certificate of such charge shall be signed or allowed by the said commissioners, nor any appeal shall be heard from such charge, before the expiration of such period of ten days; and if the person so charged shall, before the expiration of the said period, deliver a return and declaration as aforesaid, which the said surveyor or inspector shall object to, then such return and declaration shall be deemed to be a sufficient notice of appeal from such charge to the commissioners of the division, who are hereby required to hear and determine the matter thereof, according to the directions of this act; and if the person so charged shall not, before the expiration of the said period of ten days, deliver a return or declaration as aforesaid, it shall be lawful for the said commissioners, upon the appearance before the said commissioners of the person charged, or some person on his or her behalf, and the delivery to them of such list and declaration as is hereinbefore required on the day or days

2. *The Acts regulating the Assessments and Collections, &c.*

50 Geo. 3, c. 105.

No person having made out lists of the greatest number of servants, &c., shall be compellable to make out a fresh list.

Proviso.

In what cases double duty struck off.

Time allowed for delivering in amended return.



2. *The Acts  
regulating the  
Assessments and  
Collections, &c.*

50 Geo. 3, c. 105.

Making false  
declaration  
misdemeanor.

Indictment for  
false declaration,  
how laid, &c.

Arrears of duties  
may be collected.

appointed for hearing appeals from the charges of such surveyor or inspector, to hear and determine the matter of such charge, according to the directions of this act, notwithstanding the person so charged shall not have given any previous notice of his or her intention to appeal: provided that in default of the appearance of the party charged before the said commissioners, or some person on his or her behalf, on such day or days of appeal, or in default of the production of such list or declaration as aforesaid, the certificate of such charge shall be confirmed by the said commissioners.

Sect. 9. That if any person, in any such declaration as aforesaid, shall wilfully and fraudulently declare any matter or thing which shall be false or untrue, every person so offending, and being thereof lawfully convicted, shall be judged guilty of a misdemeanor, and shall be committed to the gaol of the county, riding, or shire, where such offence shall be tried, for any space of time not exceeding six calendar months, and shall be fined in such sum, not exceeding treble the amount of duty for which such person shall have been charged, as the court before whom such trial shall be had shall think fit to order.

Sect. 10. That any indictment for such misdemeanor, in making a false declaration as aforesaid, whether such declaration shall be made within Great Britain or without, shall be laid, tried, and determined in the county, riding, or shire, where such declaration shall be exhibited to the respective commissioners of the duties to which such declaration shall relate.

Sect. 11. And whereas, by 48 Geo. 3, intituled, "An Act to amend the Acts relating to the Duties of Assessed Taxes, and of the Tax upon the Profits of Property, Professions, Trades, and Offices, and to regulate the Assessment and Collection of the same," certain rules and directions are contained for paying to the receiver-general, and accounting for the duties received by the collectors in that part of Great Britain as aforesaid: and whereas it is expedient that the same shall be altered and amended in certain particulars; be it further enacted, that whenever any schedule of arrears shall have been, or shall be transmitted by the respective commissioners acting in the execution of the acts in relation to the duties therein mentioned, or any of them, to the receiver-general of the said respective duties, and the commissioners for the affairs of taxes shall be of opinion that the said duties in arrear might more conveniently be collected by the respective collectors of the said duties in their respective districts, according to the directions of the several acts granting the said duties, or other acts relating to the said respective duties, than by process to be issued out of the Court of Exchequer, it shall be lawful for the said commissioners for the affairs of taxes to direct the said receiver-general to return the said schedules to the said respective commissioners from whom he or they received the same; and the said respective commissioners shall cause the said duties in arrear to be levied, under all or any of the powers, and by any of the ways and methods, prescribed in the said acts respectively, without delay.

48 Geo. 3, c. 141.

"No. V.—Rules and Directions for paying to the Receiver-General, and accounting for the Duties received by the Collectors."

Collectors shall  
pay the duties on  
the next receipt,  
and account twice  
each year.

"First.—The several collectors shall pay to the receiver-general, or his deputy, all monies of the said respective duties which the said collectors shall have received or levied, by virtue of any of the acts herein mentioned, on the respective days herein appointed for payment of the said duties or any of them, next after their receipt of the same, and shall, twice in each year, account with such receiver-general or his deputy, in the manner hereinafter mentioned, for all such duties; that is to say, for the duties of assessed taxes, the said collectors shall pay or account for one entire moiety thereof on the day to be appointed next after the 10th day of October, and the remainder

thereof on the day to be appointed next after the 5th day of April, in each year; and for the duties on property, professions, trades, and offices, the said collectors shall pay or account for one entire moiety thereof on the day to be appointed next after the 5th day of January in each year, and the remainder thereof on the day to be appointed next after the 5th day of July following; on which last-mentioned days appointed for payment to the said receiver-general or his deputy, of the said respective duties, *videlicet*, on the day appointed next after the 5th day of April yearly, for the payment of the last moiety of the duties of assessed taxes, and on the day appointed next after the 5th day of July, yearly, for payment of the last moiety of the duties on property, professions, trades, and offices, the full and entire amount of duties, penalties, and sums of money contained in the said supplementary assessments of the said respective duties, shall also be paid to the receiver-general or his deputy, or accounted for to him or them in the manner hereinafter directed; for which payments, the said receiver-general or his deputy shall give to such collectors receipts in writing, distinguishing the amounts received for the duties on assessed taxes from the amount received for the duties on property, professions, trades, and offices, and from all other duties payable to his Majesty, and for which receipts no stamp duty shall be charged or chargeable, any statute to the contrary thereof notwithstanding: Provided, that if any collector or collectors shall not, at or before the respective times hereinbefore limited, have received or levied the said respective duties, or shall not then account to the receiver-general or his deputy for the same, in the proportions before directed, he or they shall deliver to the said receiver-general or his deputy, at the respective times appointed for such payments, or to the commissioners of the division, within three days after the respective times aforesaid, a schedule in writing, signed by such collector or collectors, containing the christian and surname of each defaulter, and the respective sums then in arrear from each such defaulter, with an affidavit subscribed, to be made on the oath or affirmation of the said collector or collectors (which oath or affirmation may be taken before any one commissioner of the division), that the several sums contained in the said schedule have been demanded from, and are due and wholly unpaid from the respective persons charged therewith, either to such collector or collectors, or to any other person or persons for such collector or collectors, to the best of his or their knowledge and belief."

"Second.—Every such schedule, being certified under the hand of the receiver-general or his deputy of the county or division where the said arrears accrued to the Court of Exchequer at Westminster, shall be received and taken as sufficient evidence of a debt due to his Majesty, and shall be a sufficient authority to the barons of the said court, or any one of them, to cause process to be issued against such defaulter named in the said schedules to levy the whole sum in arrear and unpaid by such defaulter; and the sheriff or other officer to whom the said process shall be directed, shall, without delay, cause the whole sum in arrear to be levied by due course of law as a debt to his Majesty on record, with all costs and expenses attending the same, and shall pay the monies so levied, after deducting the said costs and expenses, to the said receiver-general or his deputy, and shall make return of the said process to the said court, according to the due course thereof: Provided that every such schedule shall remain with the commissioners of the division for the space of forty days before the certificate thereof shall be transmitted to such court, during which period of forty days every such collector shall give due notice of such schedule to the several defaulters named therein, in such manner as the said respective commissioners shall direct, on pain that every collector neglecting so to do shall forfeit the like penalty as is imposed on collectors by the said several acts, or any of them, in other cases of neglect of duty; and it shall be lawful for every such defaulter within the like period to pay his or her arrears to the said collector or collectors, whose receipt shall be a sufficient authority to the said commissioners to discharge the arrears so paid from the said schedule; and it shall also be lawful for the said commissioners, if they shall see cause, to issue fresh warrants to collect the said arrears, or any of them, within the said period of forty days, and during that period to use all or any the means or methods prescribed by the several acts relating to the said respective duties, for the recovery of the said arrears, or direct the said arrears to be levied by the respective collectors under their former warrant, as shall be most expedient; and all warrants to be issued for that purpose may

2. *The Acts regulating the Assessments and Collections, &c.*

48 Geo. 3, c. 141.

Receipts shall be given for each such payment.

In default of payment of full amount, a schedule of arrears to be given.

Certificate of such schedule to be ground of process.

Schedule to remain with commissioners for a certain time, during which collectors shall give notice to defaulters.

2. *The Acts regulating the Assessments and Collections, &c.*

48 Geo. 3, c. 141.

be directed either to the said collectors, or to the high constable, constables, or other peace officers, within the limits of their division, or any one or more of them, or to any other person or persons whom the said commissioners shall think proper, with authority to levy by distress and sale, in the manner directed by the said acts respectively, the sums in arrear, together with all costs and expenses attending the said process and the execution thereof; and the sums so levied, after deducting the said costs and expenses, shall be paid to the receiver-general or his deputy, at such time and place as the said receiver-general shall appoint, and shall be discharged from the said schedule; and all high constables, constables, and other peace officers, within the said division, shall act in obedience to the directions of the said commissioners, and shall execute all such orders and process as shall be to them or any of them directed for the recovery of the said arrears: Provided also, that when the commissioners of the division shall certify to the commissioners for the affairs of taxes any reasonable cause for non-payment of, or for not proceeding to levy any part of the said arrears included in the said schedule, and that they have good reason to believe the same will be paid within a reasonable time to be stated in such certificate, it shall be lawful for the said commissioners of the division to retain the said schedule in their hands for such further time as shall be necessary, and as shall be mentioned in their aforesaid certificate."

In default of such schedule, receiver-general may certify the default to the Exchequer.

"Third.—In default of such schedule being delivered within the space of three days as aforesaid, either to the receiver-general or his deputy, or to the said commissioners, it shall be lawful for the receiver-general, to whom the payments of the said duties shall not have been made in the proportions herein prescribed, and at the times above-mentioned, and he is hereby required to certify to the said Court of Exchequer the amount of the duties remaining unpaid, to the best of his knowledge and belief, and the particular ward, parish, or place, and the division where such failure hath happened, together with the names of the collectors of the said parish, ward, or place; and such certificate, under the hand of such receiver-general or his deputy, shall be a sufficient authority to the barons of the said court, or any one of them, to cause process by way of *distringas* to be issued out of such court against the said collector or collectors, upon which writ of *distringas* the sheriff or other officer to whom the said process shall be directed, shall return such issues from time to time as such court or baron shall order, until a return of such schedule and arrears shall have been made to the said court, and immediate process shall thereupon issue for levying the said arrears out of and under the seal of such court, which levy shall not be remitted unless all the said duties in arrear shall be paid or satisfied before the return of such process."

Surveyor shall attend receiver-general at his receipt.

"Fourth.—On each half-yearly day of payment, as herein is directed, the surveyor of the district shall, on notice thereof from the receiver-general or his deputy, attend with such of the duplicates of assessment as shall have been delivered to him, and as shall be required by the said receiver-general or his deputy, and shall assist him or them in adjusting the accounts of payments and of arrears, and shall also assist the collectors in making out their schedules of arrears to the best of his judgment."

Payment of duties to receiver-general where the arrears have been levied.

"Fifth.—The duties contained in any schedule of arrears as aforesaid, which shall be paid to such collector or collectors within the period of forty days before mentioned, or within such further period as shall have been stated in the certificate of the commissioners for the retention of such schedule as before mentioned, shall be made over to such receiver-general or his deputy, at such time and place as the said receiver-general shall appoint."

Collectors advancing duties empowered to levy the sum paid.

"Sixth.—Whenever any collector or collectors shall have advanced and paid to the receiver-general or his deputy any sum of money for or on account of the duties assessed on any other person or persons, whether at his or their request or not, it shall be lawful for such collector or collectors, in default of repayment to him or them, at any time within the space of six calendar months after such payment, to levy the said duties by the like ways and methods as such collector or collectors might have levied the same before such payment thereof to such receiver-general or his deputy, and as if such duties had not been paid or satisfied."

Of the receivers-general.  
Penalty on inspectors and surveyors

By 48 Geo. 3, c. 141, s. 4, when the commissioners of any division shall have fixed the day or days of appeal against the surcharges made by any inspector or surveyor, under the said acts or any of them,

and shall have caused due notice thereof to be given, according to the directions of the said acts, and the said inspector or surveyor, having like notice thereof, shall wilfully neglect to attend the meeting or meetings of the said commissioners, held in pursuance of such notices, whereby the commissioners shall be prevented in proceeding to hear such appeals, it shall be lawful for the said commissioners to allow to each appellant attending such meeting a reasonable compensation for such attendance, to be settled by the said commissioners, and paid to such appellants respectively by the receiver-general of the said duties, or his deputy, on the production of the certificates of any two or more of the said commissioners, testifying such allowance.

Sect. 5. That it shall be lawful to and for his Majesty, his heirs and successors, or the lords commissioners of the treasury, or any three or more of them, now or for the time being, or the high treasurer for the time being, from time to time to constitute and appoint, for England and Wales, such person or persons, not exceeding ten in number at any one time, as his Majesty, his heirs and successors, or the said commissioners of the treasury, or the high treasurer for the time being, shall think proper, to be inspectors-general for the special purposes of this act, hereinafter specified and declared; and to allow to such inspectors-general such reasonable salaries, charges, and expenses, as may be necessary for their pains in executing this act in the several particulars hereinafter mentioned; and no person to be appointed inspector-general under this act shall be entitled to amend any assessment made under the said acts, or to surcharge any person or persons in respect thereof; nor shall any such person have, or receive, or claim any advantage or emolument from any assessment or surcharge to be made under any of the said acts, nor any other emolument than the salary and allowance authorised by his Majesty, the commissioners of the treasury, or the high treasurer as aforesaid.

2. *The Acts regulating the Assessments and Collections, &c.*

48 Geo. 3, c. 141. neglecting to attend meetings of the commissioners.

His Majesty or the treasury may appoint ten persons to be inspectors-general, and allow them salaries, &c.

“The Powers to be vested in the Inspectors-General.”

Their powers.

“First.—It shall be lawful for such inspectors-general to visit from time to time each inspector and surveyor acting in the execution of the several acts relating as well to the duties of assessed taxes as the said duties on property, professions, trades, and offices, within the limits of the circuit for which such inspector-general shall be appointed, and to examine all or any of the books and assessments and duplicates, or certificates of assessment or surcharge, in the hands or power of such inspector or surveyor; and also to inquire into the conduct of every such inspector and surveyor in the execution of their respective offices, and into their fitness and capacity to execute the same, and to report from time to time on the several matters aforesaid to the commissioners for the affairs of taxes; and every such inspector and surveyor shall attend such inspector-general at such time and at such place, within the district of such inspector and surveyor, as the said inspector-general shall appoint, and shall have given three days' notice of to such inspector or surveyor.”

To visit inspectors and surveyors.

“Second.—It shall be lawful for every such inspector-general to administer to any such inspector or surveyor, whenever he shall see occasion to examine him or them in any matter touching the execution of the said acts, an oath that he shall true answer make to all such questions as shall be demanded of him; and the substance of such answer or answers as such inspector or surveyor shall give, shall in his presence be reduced into writing, and read to him, with liberty to alter or amend the same in any particular; and he shall sign his assent to the same in his own name, and in his usual manner of writing or signing the same.”

To administer an oath to inspectors and surveyors.

“Third.—It shall be lawful for every such inspector-general as aforesaid, whenever he shall see occasion, to report to the commissioners of the division on any matter or thing touching the execution of the said acts or this act in relation to any assessment or assessments in such division, or touching the conduct of any clerk to such commissioners, or of any assessor or collector appointed under the said acts or this act, together with the opinion of such inspector-general thereon; and every such inspector-general shall transmit

To report to commissioners of division.

2. *The Acts regulating the Assessments and Collections, &c.*

48 Geo. 3, c. 141.

In certain instances a case may be transmitted to commissioners for taxes.

a duplicate of such last-mentioned reports to the commissioners for the affairs of taxes; and whenever any inspector-general shall have reported to the commissioners of any division any such matter or thing which, in the opinion of such inspector-general, shall require the particular consideration of the commissioners of such division, it shall be lawful for them to hold a meeting for that purpose, and they are hereby required to hold such meeting within a reasonable time after such report, at which meeting such inspector-general may attend for the purpose of explaining the matter or matters contained in the said report, and of suggesting for their consideration the propriety of adopting such order or orders as may be agreed upon by the major part of the commissioners of such division who shall be present at such meeting."

"Fourth.—If any inspector-general as aforesaid, or any commissioner for the division, who shall have been present at any meeting of commissioners at which the report of such inspector-general shall have been taken into consideration as aforesaid, shall apprehend the determination made by the commissioners at such meeting on the said report, or any of the matters therein contained, to be contrary to the true intent and meaning of the said acts relating to the said duties respectively, or any of the said acts, it shall be lawful to and for such inspector-general, and to and for any one or more of the commissioners for the division, present at the time of such determination respectively, to require a case to be prepared, and signed by the said commissioners for the division; in which case the said commissioners shall state specially the part or parts of the report of the said inspector-general, and the facts on which the question arose, together with their determination thereupon, and any other circumstances influencing the said commissioners in such their determination; and which case the said commissioners, or the major part of them then present, are hereby required to state and sign accordingly, and to cause the same to be transmitted to the commissioners for the affairs of taxes, who shall forthwith submit the same to the judges of the courts of record at Westminster; and such judges or any two or more of them, are hereby required, with all convenient speed, to return an answer to such case so transmitted, with their opinion thereon subscribed thereto, and what ought under all circumstances to be done therein, according to which opinion and directions, so certified, the determination of the commissioners which shall have been so objected to, and which shall be stated in such case, shall be confirmed, reversed, altered, or amended, as the case may require, and if any assessments shall be depending on such determination of the said commissioners, the same shall also be altered or confirmed according to the said opinion."

Exception as to Scotland.

Sect. 6. The provisions of this act hereinbefore contained are not to extend to Scotland.

Sections 7, 8, 9, 10, 11, as to duties on profits, &c., are repealed.

Certain places shall be assessed according to annexed schedule.

Sect. 12. That the several parishes and places, or parts of parishes or places, set down in the first column of the following schedule, and which have been heretofore charged to the said respective duties, or either of them, in the respective divisions mentioned in the second column of the said schedule, and set opposite thereto respectively, shall, from and after the passing of this act, be charged to the said respective duties in the divisions, and shall be subject to the jurisdiction of the commissioners, and persons acting under them, and to the inspectors and surveyors of the division mentioned in the third column of the said schedule, and set opposite thereto respectively.

Schedule referred to by the above clause.

Description of Parishes or Places.	Heretofore charged in.	Hereafter to be charged in.
Part of the parish of Wokington, situate in the counties of Berks and Wilts .	Hundred of Amesbury, Wiltshire.	Hundred of Sonning, Berkshire.
Part of the parish and town of Morpeth, in the county of Northumberland	Castle Ward, Northumberland.	Morpeth Ward, Northumberland.
Part of the parish of Gillingham, in the county of Kent, called the Grange, parcel of the liberty of Hastings, in the county of Sussex	Town and port of Hastings, county of Sussex, and liberty thereof.	Rochester division, part of the Lathe of Ford, county of Kent.
Bushton, part of the parish of Cleve Pyhard, in the county of Wilts .	Hundred of Elstub and Everley, Wiltshire.	Hundred of Kingsbridge, Wiltshire.
Little Hinton, in the county of Wilts .	The same.	The same.
Wroughton, in the county of Wilts . . . . .	The same.	The same.

2. *The Acts regulating the Assessments and Collections, &c.*

48 Geo. 3, c. 141.

Sect. 13. That nothing in this act shall be construed to extend to Exceptions. any of the cases hereinafter specified; (that is to say,)

“First.—To the duties granted by an act, passed in the thirty-eighth year of the reign of his present Majesty, by way of a land-tax.” 38 Geo. 3, c. 3.

“Second.—To the duties granted, or to be granted, by any act or acts of Pensions, &c. parliament for one year, for the service of such year.”

By 5 & 6 Vict. c. 37, s. 3, which recites that divers parishes and places, or parts thereof, in Great Britain, are detached from the main body of the several counties to which they respectively belong; and for the more convenient execution of the acts relating respectively to the land tax, the duties of assessed taxes, and the duties on profits arising from property, professions, trades, and offices, it is expedient to authorise the execution of the said acts in such parishes and places, and parts thereof, respectively, by the commissioners for putting in force the said acts in the respective counties, ridings, or shires adjoining or near to which the said parishes or places, or parts thereof, are locally situate: it is enacted, “That from and after the passing of this act the several parishes and places, and parts of parishes and places, described in the schedule marked (A.) to this act annexed, shall in all matters and things relating to the assessing, charging, raising, and levying of the land tax, and the duties of assessed taxes, and also the duties on profits arising from property, professions, trades and offices, be under and subject to the jurisdiction and authority of the commissioners appointed or to be appointed for putting in execution the acts relating to the said land tax and to the said duties respectively in and for the several counties, ridings, or shires which are respectively mentioned in the fourth column of the said schedule in conjunction with the names or descriptions of such detached parishes or places, or parts thereof respectively; and in all other similar cases for which no special provision is hereby made, it shall be lawful for the commissioners of stamps and taxes to order and direct that in all such matters and things as aforesaid any such detached parish or place, or part of a parish or place, as aforesaid, shall be under and subject to the jurisdiction and authority of the commissioners appointed or to be appointed for putting in execution the said acts in and for such county, riding,

5 & 6 Vict. c. 37.  
Detached parishes and places described in schedule (A.) transferred to the jurisdiction of commissioners of land and assessed taxes for the counties in or near to which they are locally situate.

Power given to commissioners of stamps and taxes to transfer the jurisdiction over similar detached parishes and places in cases not specially provided for.

2. *The Acts regulating the Assessments and Collections, &c.*

5 & 6 Vict. c. 37.  
Commissioners to whose jurisdiction such parishes are transferred to have full power to execute therein the acts relating to the land tax, assessed taxes, and property tax.

Commissioners of stamps and taxes to direct parishes to be added to adjoining or formed into new divisions

or shire adjoining or near to such detached parish or place, or part thereof, as the said commissioners of stamps and taxes shall name in that behalf."

Sect. 4. And be it enacted, that the commissioners under whose jurisdiction or authority any such detached parish or place, or part thereof, as aforesaid, is or may be placed, by or in pursuance of this act, shall have full power and they are hereby authorised to execute and put in force the several acts aforesaid, and the several powers and provisions thereof for the assessing, charging, levying, and enforcing payment of the land tax and the several duties aforesaid, and otherwise relating thereto, in and throughout any such parish or place, or part of a parish or place, as aforesaid, in as full and ample a manner as the said commissioners are or may be authorised to execute the said acts or any of them within the county, riding, or shire for which they have been or may be appointed, anything in any former act contained, or any usage or practice, to the contrary notwithstanding.

Sect. 5. Provided always, and be it enacted, that it shall be lawful for the commissioners of stamps and taxes to order and direct that any such detached parish or place, or part of a parish or place, as aforesaid, shall be added to any adjoining or other division or divisions, or be formed into one or more new division or divisions, as the said last-mentioned commissioners shall think fit.

SCHEDULE (A.) to which this Act refers.

1. Description of detached Parishes or Places, or Parts of Parishes or Places.	2. Counties to which they belong.	3. Counties in which they are locally situate.	4. Counties, the Commissioners for which are to have Jurisdiction over such detached Parishes, Places, or Parts.
Part of Shilton Parish . . . .	Berkshire . . . .	Oxfordshire . . . .	Oxfordshire.
Eye, commonly called Sonning Eye, and Dunsden, Hamlets in Sonning Parish . . . .	Berkshire . . . .	Oxfordshire . . . .	Oxfordshire.
Caversfield Parish . . . .	Buckinghamshire.	Oxfordshire . . . .	Oxfordshire.
Part of Maker Parish, in the Tything of Vaulterholme . . . .	Devonshire . . . .	Cornwall . . . .	Devonshire.
Stockland Parish . . . .	Dorsetshire . . . .	Devonshire . . . .	Devonshire.
Dallwood Township . . . .	Dorsetshire . . . .	Devonshire . . . .	Devonshire.
The District of Northamshire . . . .	Durham . . . .	Northumberland . . . .	Northumberland.
The District of Islandshire, including the Farne Islands and Monkhouse . . . .	Durham . . . .	Northumberland . . . .	Northumberland.
The Parish of Bedlington or Bedlingtonshire . . . .	Durham . . . .	Northumberland . . . .	Northumberland.
Minety Parish . . . .	Gloucestershire . . . .	Wiltshire . . . .	Wiltshire.
Shennington Parish . . . .	Gloucestershire . . . .	Oxfordshire . . . .	Oxfordshire.
Farloe Chapelry . . . .	Herefordshire . . . .	Shropshire . . . .	Shropshire.
Roobford Parish . . . .	Herefordshire . . . .	Worcestershire . . . .	Worcestershire.
Litton and Cascob Township . . . .	Herefordshire . . . .	Radnorshire . . . .	Radnorshire.
Part of Coleshill Hamlet . . . .	Hertfordshire . . . .	Buckinghamshire . . . .	Buckinghamshire.
Part of Everton Parish . . . .	Huntingdonshire . . . .	Between Bedfordshire and Cambridgeshire . . . .	Bedfordshire.
Welsh Bicknor Parish . . . .	Monmouthshire . . . .	Herefordshire . . . .	Herefordshire.
Boycot Township . . . .	Oxfordshire . . . .	Buckinghamshire . . . .	Buckinghamshire.
Lillingston Lovell Parish . . . .	Oxfordshire . . . .	Buckinghamshire . . . .	Buckinghamshire.
Part of Hales Owen Parish . . . .	Shropshire . . . .	Bounded by Worcestershire and Staffordshire . . . .	Worcestershire.
Holwell Parish, including Buckshaw Tything . . . .	Somersetshire . . . .	Dorsetshire . . . .	Dorsetshire.

## Schedule (A.)—continued.

2. The Acts  
regulating the  
Assessments and  
Collections, &c.  
5 & 6 Vict. c. 87.

1. Description of detached Parishes or Places, or Parts of Parishes or Places.	2. Counties to which they belong.	3. Counties in which they are locally situate.	4. Counties, the Commissioners for which are to have Jurisdiction over such detached Parishes, Places, or Parts.
North Ambersham and South Ambersham Tythings, in the Parish of Steep	Hampshire . .	Sussex . . .	Sussex.
Broom Parish . . . . .	Staffordshire . .	Worcestershire .	Worcestershire.
Clent Parish . . . . .	Staffordshire . .	Worcestershire .	Worcestershire.
Tutnal and Cobley Hamlet .	Warwickshire . .	Worcestershire .	Worcestershire.
Stretton-upon-Foss Parish, Il- mington Parish, Compton Scorpion Hamlet, Whitchurch Parish, Ditchford Hamlet .	Warwickshire . .	Between Parts of Worcestershire and Gloucester- shire .	Worcestershire.
Part of Wokingham Parish . .	Wiltshire . . .	Berkshire . . .	Berkshire.
Hinton Tything, in Hurst Parish	Wiltshire . . .	Berkshire . . .	Berkshire.
Didnam Tything, in Shinfield Parish . . . . .	Wiltshire . . .	Berkshire . . .	Berkshire.
Swallowfield Parish . . . .	Wiltshire . . .	Berkshire . . .	Berkshire.
Kingswood Parish . . . . .	Wiltshire . . .	Gloucestershire .	Gloucestershire.
Poulton Parish . . . . .	Wiltshire . . .	Gloucestershire .	Gloucestershire.
Iccomb Parish . . . . .	Worcestershire .	Between Gloucestershire and Ox- fordshire .	Gloucestershire.
Dailsford Parish . . . . .	Worcestershire .	Oxfordshire . . .	Gloucestershire.
Oldborough Parish . . . . .	Worcestershire .	Warwickshire . .	Warwickshire.
Edvin Loach Parish . . . . .	Worcestershire .	Herefordshire . .	Herefordshire.
WALES.			
Carregovah Township . . . .	Denbighshire . .	Between Shrop- shire and Mont- gomeryshire . .	Montgomeryshire.
Part of Glasbury Parish . . .	Brecknockshire .	Brecknockshire or Radnorshire . .	Brecknockshire.

By 7 & 8 Vict. c. 46, s. 3, which recites that difficulties had arisen in carrying into execution the several acts relating to the duties of assessed taxes, and the duties on profits arising from property, professions, trades, and offices, in divers privileged and other places, by reason of doubts as to whether such places are extra-parochial, or included within or forming part of any parish, tithing, or place for which separate assessments of the said duties have been usually heretofore made: For remedy thereof it is enacted, that it shall be lawful for the commissioners of stamps and taxes, or any two or more of them, and they are hereby authorised and empowered, from time to time, by any order in writing under their hands, to order and direct that any privileged or other place, whether extra-parochial or not, but not being itself an entire parish, shall, for the purposes of assessing, charging, collecting, and levying the said duties respectively, and for all other the purposes of the several acts aforesaid, be deemed to be within or part of such district or division, and within or part of such parish, tithing, ward, or place respectively, as shall appear to the said commissioners to be most convenient and proper for the purposes aforesaid, and thereupon such privileged or other place shall be deemed to be within or part of such district or division, and within or part of such parish, tithing, ward, or place, according to such order, for all the purposes aforesaid; and the said respective duties shall be assessed, charged, raised, collected, and levied within such privileged or other place, and upon the occupiers or inhabitants thereof, by or under the authority of the commissioners appointed or authorised to put in execution the said respective acts in the district or division, and by the assessors, collectors, or

7 & 8 Vict. c. 46.  
Commissioners of  
stamps and taxes  
empowered to  
direct within what  
districts and  
parishes privi-  
leged and other  
places shall be  
rated to the as-  
sessed taxes and  
property tax.



2. *The Acts  
regulating the  
Assessments and  
Collections, &c.*

7 & 8 Vict. c. 46.

Mode of proceeding to make the assessments of the duties in the year in which any order is made for annexing any privileged or other place to a parish for the purposes of the said acts.

other officers appointed for the parish, tithing, ward, or place within or part of which such privileged or other place shall be by any such order as aforesaid declared or directed to be deemed to be, any law, statute, or usage to the contrary notwithstanding: Provided always, that it shall be lawful for the said commissioners of stamps and taxes, or any two of them, to revoke any such order, and to substitute any other order in lieu thereof, from time to time as often as it shall appear to the said commissioners to be expedient so to do: Provided also, that no such order shall prejudice or affect any assessment of the said respective duties for any year prior to that in which such order shall be made; but that all such duties assessed and charged for any previous year shall be collected, levied, and recovered by the same persons, under the same authority, and in like manner as they would have been if such order had not been made.

Sect. 4. And be it enacted, that where before or at the time of the making of any such order as aforesaid any assessment of the said respective duties or either of them shall have been made for such privileged or other place as aforesaid, or upon the occupiers or inhabitants thereof, in or for the year in which such order shall be made, whether the same shall be a separate assessment for such privileged or other place, or part of or included in the assessment for any parish, tithing, ward, or other place, in case the duties so assessed shall not have been previously paid and discharged, the surveyor of the said duties shall certify the particulars of every such assessment to the commissioners acting in the execution of the said acts respectively for the district, and parish, tithing, ward, or place, within or part of which such privileged or other place shall be by such order declared or deemed to be; and where at the time of the making of any such order as aforesaid no assessment of the said respective duties shall have been made for such privileged or other place as aforesaid, or upon the occupiers or inhabitants thereof, in or for the said year, or in case there shall be any omission of any person, article, matter, or thing in or from any such assessment as last aforesaid which shall have been made, or any insufficient rate or amount of duty charged thereby, it shall be lawful for the surveyor of the said duties to certify in like manner to the said commissioners the particulars of any assessment which ought to be made upon any occupier or inhabitant of such privileged or other place, and of any increased rate or amount of duty which ought to be charged upon any such occupier or inhabitant; and in any of the several cases aforesaid the said commissioners shall cause the particulars so certified to them as aforesaid to be inserted or included in or added to the assessment of the like duties made or to be made for the same year in or for the parish, tithing, ward, or place within or part of which such privileged or other place shall be by such order as aforesaid declared or deemed to be, and shall cause the duties to be assessed and charged thereon or in respect thereof according to such certificate, and thereupon the said duties shall be deemed to be part of the last-mentioned assessment for all intents and purposes whatsoever, and shall be collected, received, levied, accounted for, and paid over by the collectors or other persons appointed or to be appointed or authorised to collect, receive, or levy the duties contained in the said assessment, without any further or other warrant or order in that behalf: Provided always, that every such assessment or charge of duties made in pursuance of such certificate of the surveyor as aforesaid shall be subject to an appeal by the party charged with or liable to the payment of the said duties, upon his giving notice in writing to such surveyor of his intention to appeal against such assessment or charge within ten days after the particulars thereof shall have been notified to such party; and every such appeal shall be heard and determined by the said respective commissioners within their district at such time and place as they shall appoint for that purpose,

of which due notice shall be given to the party assessed or charged as aforesaid.

Sect. 5. And whereas by the said acts relating to the said respective duties the commissioners for putting the same in execution respectively are required or directed to hold certain meetings, and to appoint certain officers, and also to do and perform divers other acts, matters, and things, in the execution of the powers and provisions of the said acts, before or upon certain days or times appointed and prescribed by the said acts for such purposes respectively: And whereas, in cases where the said commissioners have omitted to put in execution the powers and provisions of the said acts within or at the times so appointed and prescribed as aforesaid, doubts have arisen as to the legality of their execution of such powers and provisions at any subsequent period, and it is expedient to remove such doubts: Be it therefore enacted, That where in any case the said respective commissioners have neglected or omitted, or shall hereafter neglect or omit, to hold any meeting, or to appoint any officer, or to do or perform any other act, matter, or thing, in the execution of the powers and provisions of the said acts respectively, within or at the time directed, appointed, or prescribed by the said acts in that behalf, the holding of such meeting, and the appointment of such officer, and the performance of any such other act, matter, or thing as aforesaid at any other time or times shall, notwithstanding any such neglect or omission, be and be deemed to have been respectively as good, valid, and effectual to all intents and purposes as if the same respectively had been held, made, done, or performed within or at the time, and according to the manner and circumstances directed, appointed, or prescribed as aforesaid, any thing in the said acts contained to the contrary thereof notwithstanding.

Sect. 6. And whereas by the said acts relating to the said duties respectively the commissioners acting in the execution thereof are required to direct their precepts to such inhabitants of each parish, ward, or place, and such number of them as they shall think most convenient, to be presenters and assessors for such parish, ward, or place requiring them to appear before the said commissioners at such place and at such time as they shall appoint, in order that such of the said inhabitants as the said commissioners shall think proper may be appointed assessors of the said several duties: And whereas it frequently happens that the persons to whom such precepts are directed wilfully disobey the same, whereby the execution of the said acts is greatly impeded: Be it therefore enacted, That if any person to whom any such precept as aforesaid shall be directed shall wilfully neglect or refuse to appear before the said respective commissioners according to the tenor and effect thereof, or, having appeared, shall refuse to submit to be appointed an assessor of the said duties or of either of them respectively, in the manner and form by the statute in such case directed and provided, every person so offending in any such case as aforesaid shall forfeit and pay for every such offence the sum of ten pounds, to be recovered and applied in like manner as any penalty incurred under the said acts or any of them may be recovered and applied.

2. *The Acts regulating the Assessments and Collections, &c.*

7 & 8 Vict. c. 46.  
Execution of the powers of the acts by the commissioners declared valid, although not within the times prescribed for that purpose.

Penalty on persons refusing to appear before the commissioners to be appointed assessors, or submit to be appointed, 10l.

### III. Of the Assessed Taxes themselves.

43 Geo. 3. c. 161; 48 Geo. 3. c. 55; 52 Geo. 3. c. 93; 54 Geo. 3. c. 141; 3 Vict. c. 17; 14 & 15 Vict. c. 36; 16 & 17 Vict. c. 90; 17 & 18 Vict. c. 1.

The assessed taxes themselves are annual duties charged as follows:—Until the passing the act 43 Geo. 3. c. 161, most of these duties were imposed by numerous separate statutes (a); but that act, reciting

43 Geo. 3. c. 161  
How charged general.

(a) The 4 & 5 Will. 4. c. 60, *ante*, the commissioners of stamps and p. 780, consolidated the board of taxes. And by 12 & 13 Vict. c. 1,

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.

that the several acts might be more effectually carried into execution if the provisions for ascertaining, charging, and assessing the duties were comprised in one act, and varied and amended in some respects, enacted, that in lieu and instead of the duties granted by or contained in the several schedules annexed to the prior recited acts, and thereafter repealed, there shall be assessed, raised, levied, collected, and paid certain duties specified in the schedules to that act, now superseded by 16 & 17 Vict. c. 90, *post*.

Although new provisions have been introduced, the 43 Geo. 3, c. 161, is the principal regulating act, and it is expedient to state its provisions.

Division of subject.

This third branch of the subject is here placed under two heads, *First*, the *Regulations* of the 43 Geo. 3, c. 161, and subsequent acts; and, *secondly*, the several *Duties*, with the particular rules and exemptions affecting them.

1.—THE REGULATIONS OF 43 GEO. 3, C. 161, AND SUBSEQUENT ACTS.

Arranged under the following heads, viz. :—

The regulations of the 43 Geo. 3, c. 161, and subsequent acts.

- I. *The Commissioners, Inspectors, Surveyors, Assessors, and Collectors*, 43 Geo. 3, c. 161, ss. 6, 8.
- II. *The Assessments and returning Lists of Persons liable*, ss. 25, 26, 28, 30, 31, 32, 33, 34 to 38, 43, 44, 49, 50, 52.
- III. *Of Amending Assessments and of Surcharges, and of Appeals and Cases for Opinions of Judges*, ss. 62 to 76; 45 Geo. 3, c. 71, s. 3; 4 Geo. 4, c. 11, s. 7.
- IV. *Provisions for facilitating the Recovery of Duties*, 43 Geo. 3, c. 161, ss. 23, 51, 53 to 56, 58, 59.
- V. *General Regulations relating to the Execution of the Act*, 43 Geo. 3, c. 161, ss. 9, 16, 78, 79, 81, 86, 80.

The 43 Geo. 3, c. 161, intituled

“An Act for repealing the several Duties under the Management of the Commissioners for the Affairs of Taxes, and granting New Duties in lieu thereof; for granting New Duties in certain Cases therein mentioned; for repealing the Duties of Excise on Licences, and on Carriages constructed by Coachmakers, and granting New Duties thereon, under the Management of the said Commissioners for the Affairs of Taxes; and also New Duties on Persons selling Carriages by Auction, or on Commission.”

This act has been superseded by later acts, as to the schedules of duties thereto; see 14 & 15 Vict. c. 36, and 16 & 17 Vict. c. 90, *post*. It repeals several acts in relation to various duties, and enacts that instead of the duties granted by or contained in the several schedules annexed to the said acts, there shall be assessed, raised, levied, collected, and paid duties mentioned in the schedules thereto.

Duties granted by this act shall be levied under the regulations of 43 Geo. 3, c. 99 (England), and c. 150 (Scotland).

Sect. 5. That all the several duties hereby granted in England, Wales, and Berwick-upon-Tweed, shall be assessed, raised, levied, and collected under the regulations of 43 Geo. 3, c. 99, “An act for consolidating certain of the provisions contained in any act or acts relating to the duties under the management of the commissioners for the affairs of taxes, and for amending the same;” and all the several duties hereby granted in Scotland shall be assessed, raised, levied, and

the board of commissioners of inland excise, and stamps and taxes; see *ante*, p. 731.

collected, under the regulations of any act passed or to be passed in the present session of parliament, for consolidating certain of the provisions contained in any act or acts relating to the duties under the management of the commissioners for the affairs of taxes, and for amending the said acts so far as the same relate to Scotland; and all and every the powers, authorities, methods, rules, directions, penalties, forfeitures, clauses, matters, and things contained in the said acts, shall be severally and respectively duly observed, practised, and put in execution, throughout the respective parts of Great Britain aforesaid, as fully and effectually, to all intents and purposes, as if the same powers, authorities, methods, rules, directions, penalties, forfeitures, clauses, matters, and things, were particularly repeated and re-enacted in the body of this act; and all and every the regulations of the said acts shall be respectively applied, construed, deemed, and taken to refer to this act, as if the same had been specially enacted therein.

Sect. 6. That, for the better execution of this act, and for the ordering, raising, collecting, levying, and paying of the several sums of money hereby made payable, all and every the persons who now are, or for the time being shall be commissioners for putting in execution, 38 Geo. 3, c. 5, "An Act for the granting an Aid to his Majesty by a Land-Tax to be raised in Great Britain, for the Service of the Year 1798;" and who shall be respectively qualified or authorised to act, and shall have taken the oaths as directed by the said respective acts passed in the present session of parliament, shall respectively be commissioners for putting in execution this act, and the powers therein contained, in all and every the respective counties, ridings, cities, boroughs, cinque-ports, towns, and places, privileged or not privileged, within England, Wales, and Berwick-upon-Tweed, and in all and every the shires, stewartries, cities, and boroughs, in Scotland; and the several sums of money so levied shall be under the care and management of the commissioners for the affairs of taxes for the time being, appointed or to be appointed by his Majesty, his heirs and successors.

Sect. 7. That the sheriff depute, and sheriff substitute in each shire or stewartry in Scotland shall by virtue of such office, without other qualification, execute this and the said last-recited act, as commissioners in the shire or stewartry for which they are appointed sheriff depute and sheriff substitute respectively, and shall not be liable to any penalty or forfeiture for acting therein without the qualification before required.

Sect. 8. That the assessors and collectors appointed by the said commissioners for any parish, ward, or place, in pursuance of the said recited acts respectively, passed in the present session of parliament, shall be the assessors and collectors of the several duties granted by this act; and the said commissioners shall cause notice to be given to such persons, that they respectively are appointed assessors and collectors of the said duties hereby granted; and the several commissioners, inspectors, surveyors, assessors, and collectors, are hereby empowered to do and execute all matters and things in relation to the duties by this act granted, which they respectively are empowered to do and execute in relation to the duties mentioned in the said recited acts respectively, and shall severally be subject and liable to the like penalties for any neglect or omission in the performance of their duty, or any fraud or abuse in executing the same, as are inflicted on such officers by the said recited acts respectively for the like offences.

Sect. 9. That the several persons who, as inspectors or surveyors, are or may be authorised to act in execution of the said recited acts respectively, passed in the present session of parliament, shall respectively have the survey and inspection of the duties by this act made

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Commissioners of land-tax qualified as under 38 Geo. 3, c. 5, &c., shall be commissioners for executing this act.

Sheriffs depute, &c., in Scotland, may act as commissioners.

Commissioners, assessors, collectors, &c., under 43 Geo. 3, c. 99, s. 150, shall execute this act.

Duty of inspectors and surveyors.

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43 Geo. 3, c. 161.

No inspector, &c., shall be commissioner.

Commissioners, inspectors, &c., may inspect poor-rates.

Penalty on refusal not exceeding 10*l*.

Every assessment in England shall be for a year from April 5, payable quarterly.

Arrears recoverable as a debt on record.

Assessments in Scotland shall be for a year, from May 24, payable half-yearly.

payable within the respective parts of Great Britain, as aforesaid, and shall take accounts of the several dwelling-houses therein, and of the servants, carriages, horses, mules, and dogs, kept by any person or persons whatever, and of the several persons liable to the other duties in this act mentioned, and of the duties chargeable in respect thereof, and shall inspect and examine the assessments or certificates thereof made and to be made from time to time, in pursuance of this act, and execute all things belonging to the same, according to the powers vested in them by this and the said recited acts respectively; provided that no inspector or surveyor now or hereafter to be appointed shall act as a commissioner in any matter or thing touching the execution of this act.

Sect. 16. And, for the better information of the commissioners appointed to carry this act into execution, and of the surveyors and persons to be appointed assessors as aforesaid, and the better to enable them to perform their duty; be it further enacted, that the said commissioners, or any two or more of them, and the said surveyors, inspectors, and assessors, or any one or more of them, or any person or persons authorised by them, or any of them, shall have liberty, from time to time, and at all seasonable times, to inspect and to take copies or extracts from any book or books kept by any parish officer or officers, or other person or persons, of or concerning the rates made for the relief of the poor, or any other public taxes, rates, or assessments, or any contributions under the management of the kirk-sessions in the respective parts of Great Britain aforesaid, in any place within the limits for which they shall be appointed; and if any person or persons, in whose custody or power any of the said books shall be, shall refuse or neglect to permit the said inspection, or the copies or extracts to be made, as aforesaid, or to attend the said commissioners with their books, when required so to do, then, and in every such case, every person who shall so refuse or neglect, shall for every such offence forfeit and pay any sum not exceeding 10*l*.

Sect. 23. That every assessment to be made of the said duties in pursuance of this act in England, Wales, and Berwick-upon-Tweed, shall be in force for one whole year, commencing from the 5th day of April in the year in which the same shall be made, and ending on the 5th day of April then next following, and the said several duties shall be paid by quarterly instalments, on the days hereinafter mentioned; (that is to say,) on the 20th day of June for the quarter commencing from the 5th day of April, and ending on the 5th day of July, the 20th day of September for the quarter commencing from the 5th day of July, and ending on the 10th day of October, and the 20th day of December for the quarter commencing from the 10th day of October, and ending on the 5th day of January, and the 20th day of March for the quarter commencing on the 5th day of January, and ending on the 5th day of April in every year, the first payment thereof to be made on the 20th day of June, 1804; and it shall be lawful for the respective commissioners, or any two or more of them, and they are hereby required, as soon as the assessment shall be made, to issue out and deliver to the respective collectors their warrants for the speedy and effectual levying and collecting the said duties, as the same shall become payable, by quarterly instalments as aforesaid; and such part thereof as cannot be so levied and collected may be recoverable as a debt upon record to the king's majesty, his heirs and successors, with full costs of suit and all charges attending the same; and, when so recovered, the said duties shall be paid to the receiver-general in aid of the parish or place answerable for the same.

Sect. 24. That every assessment to be made of the said duties in pursuance of this act in Scotland, shall be in force for one whole year, and shall commence from the 24th day of May in the year in which the same shall be made, and end on the 24th day of May then next follow-

ing; and the said last-mentioned duties shall be paid by half-yearly instalments on the days hereinafter mentioned; (that is to say,) on or before the 29th day of September and the 25th day of March in every year; the first payment thereof to be made on or before the 29th day of September, 1804; and such payments shall be made by the person charged with the said duty, his or her executors or administrators, by themselves or others in their behoof, to the collector of the said duties personally, or at his office, and the said collector shall, on payment thereof, give acquittances (without taking any thing for such acquittance, the stamp duty for the same excepted), unto the several persons who shall pay the same, which shall be a full discharge to the persons paying the same, against his Majesty, his heirs and successors; and every person so charged shall, in case of his or her not paying the same upon the day upon which he or she is hereby appointed to pay the same, or within three days thereafter, forfeit treble the value and extent of the duty with which he or she stands charged, to be recovered as the said duties may be recovered by the said last-mentioned act of the present session of parliament.

Sect. 25. That the assessors for the time being shall, within twenty-one days after the respective times appointed for the commencement of the said duties, and for every subsequent year, within twenty-one days after the commencement of the respective duties for each year, cause general notices to be affixed on the doors of the church or chapel, or market-house, or cross (if any) of the city, town, parish, or place for which such assessor shall act; and if such place shall not have a church or chapel, or market-house, or cross, then on the nearest church or chapel door of any adjoining parish, requiring all persons residing in the said city, town, parish, or place, who are by this act required so to do, to make out and deliver to the respective assessors, within fourteen days after the date of such notice, such lists or declarations as are herein required; and such general notice shall, from time to time, when the same shall be affixed, be deemed sufficient notice of the time within which such returns shall be required to be made in each year, to all persons residing or being in such city, town, parish or place, and the affixing the same in manner before directed, shall be deemed good service of such notice to all persons within the limits of such city, town, parish, or place; and the said respective assessors shall cause the said notices from time to time to be replaced (if necessary) during the said space of fourteen days previous to the time required for the delivery of such lists or declarations as aforesaid: and every person wilfully tearing, defacing, or obliterating any such notice so affixed, shall forfeit for every such offence a sum not exceeding 20*l.* nor less than 5*l.*

Sect. 26. That besides such general notices as aforesaid, the said respective assessors shall, within the respective periods before mentioned, in every year, give or leave at every dwelling-house, where any person liable or supposed to be liable to the duties hereby made payable, as set forth in the several schedules to this act annexed, marked C, D, E, F, G, H, I, and K, or any of them, shall usually reside within the limits of the places for which such assessors act, one notice to and for the occupier thereof; and where such dwelling-house shall be let in different apartments, and occupied distinctly by different persons or families, a like notice to and for the occupier of each distinct story or apartment, provided any person liable or supposed to be liable as aforesaid, shall reside there, and also a like notice to and for every person so liable, then residing in such dwelling-house as a lodger or inmate, within the knowledge of such assessor or assessors, requiring such persons respectively to prepare and produce, within twenty-one days next ensuing the date of such notice, a list or lists, or declaration or declarations in writing, in the forms and in the manner hereinafter required.

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.

Penalty on non-payment, treble value. (See 43 Geo. 3, c. 150.)

Assessors shall yearly cause general notices to be affixed on the church door, &c. requiring lists to be delivered (see ss. 27, 28); which shall be deemed sufficient notice

Penalty for defacing such notices, 20*l.* to 5*l.*

But assessors shall also leave notices at dwelling-houses for persons liable to duties in schedules C—K, to return lists. (See ss. 27, 28.)

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.  
Persons liable to any of the duties in schedules C—K, in the course of the year ending on the days appointed for commencement of the duties (see s. 1), shall return lists of particulars thereof, &c. to the assessors, within six weeks after such days. (a)

Sect. 27. That every person who shall have retained or employed any male servant or servants, or other male person or persons herein described or mentioned, or kept any carriage, horse, or mule, or shall have used or exercised the trade or business of a horse-dealer or coachmaker, or seller of carriages by auction or on commission as aforesaid, or shall have used or worn hair-powder or any armorial bearing or ensign, in the course of the year ending on the day next before the respective days appointed for the commencement of the said duties in the year 1804, shall, before the end of six weeks thereafter, whether any previous notice for that purpose shall have been delivered or not, cause to be prepared true and particular lists in writing, signed by such person or on his or her behalf, which shall contain the parish or place, and the parishes or places where such person shall then or usually reside, and one of such lists shall also contain the greatest number of male servants retained or employed by such persons, and also the names of the several other male persons by them retained or employed at any one time in the course of the year ending as aforesaid, in any of the capacities mentioned in the schedules hereunto annexed, and the names of such servants and other persons, and the several capacities in which they shall serve; and whenever the person required to return such list shall be liable to the duty on servants kept by any male person never having been married, he shall be required to denote the same, by adding to the signature of his name the letter B.; another of the said lists shall contain the greatest number of carriages mentioned or described in the schedules annexed to this act, kept by such person at any one time within the like period, describing therein, by its usual name and description, the particular kind and denomination of such carriage by which the body or bodies of such carriages are usually called or known, and distinguishing the number of such carriages with four wheels, from the number of such carriages with less than four wheels, and also the number of bodies of such carriages which shall successively have been used on the same carriage or number of wheels, and also the number of horses by which such carriages with less than four wheels shall have been drawn at any time within the like period, and also the number of such carriages liable as taxed carts; another of the said lists shall contain the greatest number of horses, mares, or geldings, kept and used by such person for the purpose of riding, or drawing any carriage chargeable with the duty made payable by this act, at any one time within the like period; another of such lists shall contain the greatest number of all other horses, mares, or geldings, and mules, kept by such person at any one time within the like period, which shall on any occasion have been used as herein mentioned; another of such lists, if the same be returned by any person who shall have used or exercised the trade or business of a horse-dealer, shall contain the place or places where the same shall have been so used or exercised within the like period, and also the greatest number of horses, mares, or geldings, kept by him or her at any time within the like period, distinguishing whether the same shall have been kept for sale, or been used by him or her, or let to hire, and the number of each so kept or used, and for what purpose, so that the duties hereby made payable shall be duly charged; and another of such lists, if the same shall be returned by any coachmaker or maker of carriages before mentioned, or by any seller of such carriages by auction or on commission, as herein is mentioned, shall contain the place or places where such trade or business shall be carried on; and another of such lists, if the same be returned by any person

(a) So much of this section as related to dogs is here omitted. The licences payable for dogs under 30 Vict. ch. 5, are made excise licences, and for duties paid in respect of them see "Excise."

who shall have worn hair-powder, or used any armorial bearing or ensign, within the like period, shall distinguish therein the particular duty and duties, and the amount thereof, to which such person is liable, with a declaration whether he or she is a housekeeper or one of the family, or a lodger, inmate, apprentice, or servant, abiding in the house of any person: and every list returned by any occupier of a dwelling-house or distinct apartment as aforesaid, shall contain the names and places of abode of every person resident in such dwelling-house, distinguishing whether such person so residing be of the family, or be lodgers or inmates or apprentices or servants; and in case such householder or occupier having unmarried daughters, or any servant or servants, shall be desirous of being personally charged to the duties hereby imposed on persons wearing hair-powder as aforesaid, instead of his or her unmarried daughters, or his or her servant or servants, as herein is allowed, then also such list shall contain the number and names of such unmarried daughters and servants respectively to be so charged to him or her, and the capacities in which such servant or servants shall serve; and every such person shall deliver or cause such lists to be delivered to the assessor or assessors of the said duties for the district, parish, or place, where such person shall reside or be, or leave or cause the same to be left at his or their dwelling-house or houses, or one of them, at or before the expiration of the time appointed by this act for the delivery thereof; and every person who shall have retained, employed, kept, or used any servants, or other male persons, carriages, horses, or mules, shall be charged for the greatest number of servants, carriages, horses, and mules, retained or employed, kept or used by him or her at any one time within the year ending as aforesaid; and every person who shall have used or exercised the trade or business of a horse-dealer, or the trade or business of a coachmaker, or maker of carriages, or of a seller of carriages by auction or on commission, or shall have worn or used hair-powder, or any armorial bearings, within the year ending as aforesaid, shall be assessed and charged by the respective assessors for the year commencing from that day, which assessments shall be made at the rate specified in the said schedules marked C, D, E, F, G, H, I, and K, and according to the lists, which shall or ought to have been returned as aforesaid, subject to such powers of surcharge as by this act are directed and given; and the assessments on the returns so to be made shall be deemed an assessment for the year commencing from the respective days in the year 1804, appointed for the commencement of the said duties.

Sect. 28. That every person liable to the said duties shall, in every year subsequent to the respective days appointed for the commencement of the said duties, within six weeks thereafter, and he or she is hereby required yearly, whether any previous notice for that purpose shall have been delivered or not, to cause to be prepared and to be delivered to the respective assessors before mentioned for the time being, true and particular lists of the greatest number of such servants or other male persons retained or employed, and of carriages, horses, and mules kept by such person, or of his or her having used or exercised the trade or business of a horse-dealer, or coachmaker, or maker of carriages as aforesaid, or of a seller of carriages by auction or on commission, as aforesaid; or of having worn or used hair-powder, or any armorial bearings or ensigns, at any one time in the course of the preceding year ending on the then preceding 5th day of April; which lists shall be prepared in the form before prescribed, and according to the directions of this act in respect thereof; and such person shall renew the same in the same manner in every year so long as such

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43 Geo. 3, c. 161.

Such persons shall be charged according to such lists for the year commencing from those days.

Lists shall be returned annually in like manner. (a)

(a) See note to s. 27.



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43 Geo. 3, c. 161.

Assessment shall be for the year in which returns are made.

How assessors shall make assessment on persons refusing or neglecting to deliver lists. (a)

Appeal against such assessments.

Assessors not bound by lists delivered.

Housekeepers shall require declaration or returns from lodgers, &c

Penalty on neglect and refusal in either party, 50*l*.

person shall be liable to the said duties or any of them, as aforesaid; and every person shall annually be chargeable in respect of the greatest number of servants or other male persons, carriages, horses, mares, or geldings, and mules retained, employed, kept, or used by him or her at any one time within such preceding year, and also in respect of his, her, or their having used or exercised the trade or business of a horse-dealer, or coachmaker, or maker of such carriages, or a seller thereof by auction or on commission, as aforesaid, or of having worn or used hair-powder, or armorial bearings or ensigns, within the same period; and the assessment made thereupon shall be deemed an assessment made for the year in which such returns shall or ought to have been made.

Sect. 29. Repealed by 50 Geo. 3, c. 105.

Sect. 30. That if any person shall neglect or refuse to make out, sign, and deliver such lists as are herein directed, or any of them, within the respective times herein mentioned, then the assessor or assessors shall, from the best information he or they can obtain, make an assessment upon such persons so refusing or neglecting for or in respect of every servant, carriage, horse, or mule retained or kept by him or her as aforesaid, and of every person having used or exercised such trade or trades as aforesaid, or worn or used hair-powder, or armorial bearings or ensigns, as aforesaid, according to the rates specified in the said schedules, and shall include the same in the certificate of the assessment to be delivered to the commissioners as herein directed; and every such assessment so made upon any such neglect or refusal shall be final and conclusive upon the person thereby charged, who shall not be at liberty to appeal therefrom, unless such person shall prove that he or she was not at his or her dwelling house or place of abode at the time of delivery of such notice, nor between that day and the time limited for delivering such list as aforesaid to the assessor, or unless such person shall allege and prove such other excuse for not having delivered his or her list, as the commissioners for executing this act shall in their judgment think reasonable and sufficient.

Sect. 31. That such assessors shall not be bound by such lists as shall be delivered to them respectively in pursuance of this act, but shall be at liberty, if they shall find upon due examination that any person, description, article, matter, or thing, which ought to be contained in such lists, is or are omitted, or untruly stated therein, to make a true assessment upon every such person, according to the intent and meaning of this act, of the real charge which ought to be imposed on such person.

Sect. 32. That every occupier as aforesaid, in whose dwelling-house or apartment any person liable to the duties by this act made payable, or any or either of them, shall reside as a lodger or inmate, shall, for the purpose of making accurate returns, cause the contents of the notice left at his or her dwelling-house to be read over and made known to each and every such lodger or inmate not having received a like notice, requiring them respectively to declare to him or her, and attest the return to be made, whether he or she be liable to the said duties, or either of them, or be exempted therefrom, or whether he or she have another place of ordinary residence where he or she intends to be charged; and every person so resident, being thereunto required as aforesaid, shall be obliged to make such declaration; and if any such lodger or inmate shall wilfully refuse to give an account as required by this act, or to attest the return to be made thereof, every such person shall forfeit and pay the sum of 50*l*.; or if any occupier as aforesaid, by whom any such declaration ought to be required, or

to whom any such declaration shall be made, shall neglect to require the same, or to insert the same in the return to be made to the assessor or assessors, in pursuance of this act, every such person shall also forfeit the sum of 50*l*.

Sect. 33. That the said assessors shall, upon receipt of any list containing the name of any lodger or inmate returned liable to any of the said duties as chargeable within the parish or place where the said assessors act, give or leave the like notice for every such person to prepare and produce, within the like period, a list or declaration signed as aforesaid; and every such person shall, within twenty-one days after notice left at such dwelling-house, make out a list or declaration, as the case shall require, and sign the same in the manner before directed, under the penalty herein mentioned for neglecting to deliver any such list or declaration. [See s. 37.]

Sect. 34. That every person who shall have divers places of residence within any part of Great Britain, or shall keep any servants or other male persons herein described, carriages, horses, or mules at divers places within Great Britain, and every person being an inmate or lodger at the time of such notices being given as aforesaid, and having an ordinary residence at some other place or places, whereat or at one of which places such person ought to be charged, shall be obliged to deliver all such lists as aforesaid at each and every of such places, and to insert in every such list the name or description of each person, article, matter, and thing, for which such person is liable to any of the said duties, or which ought to be returned according to the directions of this act; and shall also, in every such list, specify the particular persons and number of each description of articles aforesaid respectively intended to be paid for within the limits of the district, parish, or place, where such list shall be delivered, and shall also, at the same time, make his or her declaration, to be inserted in such list, and signed by him or her, specifying the particular counties or county, and parishes or parish, wherein each such other place of his or her residence is situate, and also the particular counties or county, and parishes or parish, wherein the said duties, or any part of the said duties, are or is intended to be paid.

Sect. 35. That if any person having delivered his or her declaration to pay the said duties in any other parish, ward, or place, than in the parish, ward, or place where such list shall be delivered, shall not return a list in such other parish, ward, or place, according to such declaration, in order to his or her being regularly brought into charge by the assessors for such other parish, ward, or place, every such person so offending shall forfeit and pay the sum of 50*l*.

Sect. 36. That every person claiming to be within any of the exemptions allowed by this act, in or by any of the schedules hereunto annexed, marked C, D, E, F, G, H, I, or K, except of the royal family, in such cases where they are specially exempted, shall make a due return thereof, and declare the cause or causes of such exemptions, such declaration to be specified in or annexed to the lists to be by him or her delivered; and if any dispute shall arise whether the person be entitled to such exemption, the proof thereof shall lie on the person claiming such exemption, who, on any charge or surcharge before such commissioners, or on any suit or prosecution, shall be permitted to allege the same on oath or affirmation, or to prove the same by lawful evidence to be produced and shown by him or her; provided that no such exemption shall be allowed, unless the same, and the cause thereof, shall have been duly returned to the assessor or assessors aforesaid.

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.

Assessors shall leave notices or lodgers, &c.

Persons having divers places of residence, &c., shall deliver lists at each. (a)

Penalty on persons declaring to pay duties in any place, and not delivering list there, 50*l*.

Claims of exemption (except with respect to the royal family) to be returned to the assessors, and proved on oath, &c.

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43 Geo. 3, c. 161.

Penalty for neglect, omission, or falsity in delivering lists or declarations, 50*l.* and duty.

Penalty for omissions shall not be sued for where the party is surcharged.

Provision for case of persons employing servants, &c., where they have no residence, &c. (a)

Sect. 37. That if any person, liable to the said duties, or any of them, in respect whereof a list or declaration ought to be delivered, or coming within any of the exemptions contained in this act, shall neglect to deliver a list or lists, or a declaration or declarations, according to the directions of this act, in every parish or place where the same ought to be delivered, or shall omit any person, or any description, article, matter, or thing, which ought to be contained therein, according to this act, or shall make an untrue return of any particular therein, he or she so offending shall forfeit and pay the sum of 50*l.* over and above any duty chargeable as aforesaid.

Sect. 38. That the penalty by this act imposed, as last aforesaid, for omitting to insert in the lists or declarations delivered, as hereby required, any person, or any description, article, matter, or thing, which ought to have been contained therein, shall not be sued or prosecuted for in any case where the person or persons against whom the suit or prosecution shall be brought, shall, before the commencement thereof, have been surcharged for the same cause, and on the same account, and assessed in double the duty hereby made payable, or any proportion thereof, according to the directions of this act.

Sect. 39. And whereas divers persons may retain or employ servants, or keep carriages, horses, or mules at places where they themselves have no houses or places of residence, and other persons liable to the duties made payable by this act, or some of them, may come into or to reside in places after the time appointed by this act for returning the lists before mentioned, not having been charged therein, or may have no fixed place of residence; be it further enacted, That in every such case it shall be lawful for the assessor or assessors, surveyor or surveyors, inspector or inspectors, within and for such districts or places respectively, at any time or times, and they are hereby strictly required and enjoined in every case within their knowledge respectively, to deliver or leave such notices as are hereinbefore directed to be given, at the house or houses where such persons shall reside or be, or where such servants, or other male persons before described, carriages, horses, or mules, shall be kept: and all and every such persons, and also all and every person or persons having the care, superintendence, or management of such servants, or other male persons before described, carriages, horses, or mules, shall deliver or cause to be delivered such list or lists as aforesaid, signed by them respectively, conformably to the directions hereinbefore contained, to the assessors, surveyors, or inspectors, within and for the respective districts or limits where any such servants, carriages, horses, or mules, are or shall be kept, or where such persons shall then reside or be, within twenty-one days after the delivery of such notices, and shall also deliver to them respectively a declaration where they, or the persons to whom such servants, or other male persons before described, carriages, horses, or mules, do belong, have been assessed for that year to the duties hereby made payable, together with the usual place or places of abode of themselves, or of the persons to whom the servants, or other male persons before described, carriages, horses, and mules, under their care, superintendence, and management, do belong, and the names of such persons; or in case no such assessment, or no sufficient assessment, shall then have been made, then where they or the persons to whom such servants, or other male persons before described, carriages, horses, and mules, do belong, shall have delivered their lists, in order to their being so assessed under the like penalties as are herein imposed on persons chargeable with the said duties for not delivering lists in the parishes and places where they

(a) See note to s. 27.

respectively reside; and every person who shall appear by such return, or otherwise, not to have been assessed in the full sum of which he or she ought to be assessed, or not to have returned the lists hereby required for the purpose of being so assessed in some other parish or place in Great Britain, or who shall not make any such return, may be chargeable to all the said duties by this act made payable, and for which returns ought to be made, either in the parish or place where such last-mentioned notice shall have been delivered, in like manner as if such person actually resided in such parish or place, or in the parish or place where such persons shall have their ordinary residence; and if any person on whom such notice shall have been served, shall remove from such parish or place, without having delivered such list or declaration, he or she shall forfeit the sum of 50*l*.

Sect. 40. That every person letting to hire any horses in such manner as not to be chargeable to the stamp-office duty made payable by law on horses let to hire, or letting any servants or carriages, shall annually return a list of the greatest number of such servants, carriages, and horses kept by him or her at any time in the prior year, in like manner, and within and for the like period, and under the like penalties, as returns of other servants, carriages, and horses, subject to the duties by this act made payable, are directed to be made; and every such list shall specify the name and place of abode of the person or persons for whose use or in whose service such servants, carriages, and horses shall have been or shall be employed, and the number of each let to hire to every such person, and the period of each letting, according to the number of servants, carriages, and horses which shall or ought to be contained in such list, the said duties by this act made payable shall be charged on the person or persons letting or hiring such servants, carriages, and horses, as the case may require.

Sect. 41. That where any person shall hire or shall have hired any horses, in such manner that the stamp-office duty payable by law on horses let to hire, shall not be chargeable on such letting, or shall hire or shall have hired any servants or carriages, then such hirer shall annually return a list of the greatest number of such servants, carriages, and horses, to the assessor or assessors of the parish or place, or parishes or places, where such hirer shall reside or be at the time such return ought to be made, as the case may require, in like manner, and within and for the like period, and under the like penalties, as returns of other servants, carriages, and horses, exempted from the said annual duties by this act, are directed to be made; and every such list shall specify the name and place of abode of the person or persons by whom such servants, carriages, and horses shall have been or shall be let to hire, and the period of each letting.

Sect. 42. That where any horses shall have been, or shall be let to hire, in such manner as not to render the person or persons letting the same liable to the said stamp-office duty, or where any servants or carriages shall be let to hire, and the hirer of such servants, horses, or carriages shall not make such return as by this act is required, then and in such case the duties chargeable in respect thereof for one year, shall and may be charged upon and paid by the person or persons hiring such servants, carriages, and horses, by the surcharge of the assessor, surveyor, or inspector, over and above the penalty incurred for any neglect or omission as aforesaid, unless the person or persons letting the same shall have been brought into charge for the same servants, carriages, and horses respectively; and if any dispute shall arise whether the person or persons so letting to hire any servants, carriages, or horses, shall have been brought into charge for the same, the proof thereof shall be on the hirer of such servants, carriages, and horses so surcharged, who, on such

### 3. Of the Assessed Taxes themselves.

43 Geo. 3, c. 161.

In default, assessments may be made upon them.

Penalty for removing without delivering list, &c., 50*l*.

Persons letting to hire horses so that the stamp-office duty shall not be chargeable, or letting servants or carriages, shall deliver lists of the number of the horses, &c., and of the names, &c., of the persons hiring.

Hirers of such horses, servants, and carriages, shall return lists thereof.

Surveyors may surcharge in default of returns the hirers of servants, &c., and the progressive duties for one year shall be charged on such hirers, unless on proof that the parties letting have been charged.

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.

Lodging-house keepers, stable-keepers, persons letting horses, servants, or carriages to hire, horse-dealers, coachmakers, and dealers in carriages, shall keep books containing entries of persons and articles chargeable with the duties, &c.

Books may be inspected and copies shall be delivered periodically to assessors.

surchARGE, shall be permitted to allege the same on oath, or solemn affirmation, or to prove the same by lawful evidence to be produced and shown by him or her; provided that the party hiring the same shall not be exempted, unless the exemption and the cause thereof shall have been duly returned to the assessor or assessors as aforesaid; and in every case where the said duties shall be chargeable on the hirer or hirers of such servants, carriages, and horses, making default as aforesaid, the progressive duties made payable thereon, by schedules C. No. 1, D. No. 1, and E. No. 1, respectively shall be charged.

Sect. 43. That every inhabitant householder of any lodging-house in which there shall be any lodger residing therein liable to any of the duties hereby made payable, of which lists are hereby required to be delivered, shall from time to time enter in a book an account of every person so liable; and every livery-stable keeper, or other person receiving any horses or carriages to stand at livery, or delivered to him or her to be kept, shall also from time to time enter in a book an account of every carriage or horse so standing at livery, or delivered to be kept by him or her; and every person letting any horses to hire in such manner as not to be chargeable to any duty payable by law on horses let to hire, or letting any servants or carriages, shall also from time to time enter in a book an account of such horses, servants, and carriages, and the number thereof, and the periods of each letting, and also the names of such servants, and the descriptions of such carriages; and every horse-dealer shall also enter in a book an account of the number of horses kept by him, whether for sale or use, distinguishing the number kept for sale, and the number kept for use, and to what duty the same are respectively liable; and every such coachmaker or maker of such carriages shall also enter in a book the number and kinds of carriages by him built and constructed for sale, distinguishing the number of wheels of each, and the number sold, and the names and places of abode of the persons to whom sold, and the days on which each carriage was delivered or sent out of his or her shop or warehouse; and every such seller of carriages by auction or on commission as aforesaid, shall also enter in a book the number and kinds of carriages sold by him or her, distinguishing the number of wheels of each, and the days on which such carriages were sold respectively; all which books shall, at all reasonable times in the day-time, be opened to the inspection of the assessor, surveyor, or inspector of the place where such person shall reside as aforesaid; and every person hereby required to enter and keep such account respectively, shall, if in England, Wales, and Berwick-upon-Tweed, within twenty days after the 5th day of July and the 10th day of October, 1804, and within twenty days after the 5th day of January and the 5th day of April, the 5th day of July and the 10th day of October, in every subsequent year, and if in Scotland, within twenty days after the 29th day of September and the 25th day of March yearly, deliver a true copy in writing of all and every entry made in such book or books respectively within the preceding quarter of the year, containing the several matters and things before directed, to the assessor or assessors of the parish or place where he or she shall reside, for the use of the surveyor or inspector of the said duties, or to such surveyor or inspector, and, when required so to do by such surveyor or inspector, every such person, or his or her chief servant, workman, or manager, shall make oath (or, being a Quaker, an affirmation) of the truth of such account, according to the best of his knowledge and belief; and every such copy of the account to be delivered by such person shall, to the best of his or her knowledge and belief, express the christian and surname of every person required to be entered in such account, and the place or places of his, her, or their usual residence; and if any such person shall neglect to keep such account, or to deliver such copy thereof, or shall wilfully

omit any description which ought to be contained therein, he or she so offending shall forfeit and pay the sum of 50%.

Sect. 44. That the commissioners for the affairs of taxes shall cause to be prepared and issued to every person applying for the same, and leaving his or her name and place of abode in writing at the office for taxes, or with any surveyor of the said duties for the district where the person making such application shall reside, proper forms for entering the accounts hereinbefore required to be made of lodgers, and of the carriages and horses standing at livery, or delivered to stable-keepers or other persons to be kept, and of the servants kept by them, and also of servants, carriages, and horses let to hire as aforesaid, and of the horses kept by horse-dealers, and of carriages built and constructed and sold by coachmakers or makers of such carriages, and of such carriages sold by auction or on commission as aforesaid; and every such account shall at the end of each year (all such entries as aforesaid being required to be first duly made) be signed by the party with his own proper name, in his or her usual manner of writing or signing the same, and returned to the assessor or assessors of the parish or place where the party shall reside, for the use of the surveyor or inspector of the districts as aforesaid, or to such surveyor or inspector as the said commissioners for the affairs of taxes shall direct, at the times hereinbefore required; and in default of such application, the party shall be obliged to provide proper forms for the said purpose, and shall cause all such entries to be duly made therein, and the same to be signed and delivered to the assessor, or surveyor, or inspector, in like manner as is before directed for the accounts issued from the office for taxes; and if any person shall neglect to deliver such accounts duly filled up and signed within the times limited as aforesaid for making such returns, every such person shall forfeit and pay the sum of 50%.

Sect. 45. That the assessor, surveyor, or inspector, to whom such account as aforesaid shall be delivered by any coachmaker or maker of carriages, or by any seller of carriages as aforesaid, shall forthwith return to the respective commissioners a certificate of the number of such carriages, of the several descriptions herein mentioned, by such persons respectively constructed or sold within the period of such account, and the amount of duty chargeable on them respectively, and the said commissioners shall cause an assessment to be made on the amount contained in each certificate, and added to the assessment of the said other duties charged in the same parish or place, and shall cause the same to be inserted in the collector's duplicate, who shall demand, receive, and collect the same, at the same times and under the same warrant, as the other duties are collected by or paid to such collector.

Sect. 46. That from and after the respective days appointed for the commencement of the said duties, every gate-keeper of or upon any turnpike road, by whom any certificate shall be filed of any horses let to hire, in such manner as not to subject the hirer thereof to any stamp-office duty payable by the laws then in force, and every collector or farmer of the said stamp-office duty, to whom such certificate shall be delivered by such gate-keeper, according to the laws then in force, shall at all seasonable times permit the surveyors or inspectors of the said duties by this act made payable, to inspect such certificates gratis, and to take copies thereof, or of such parts thereof, or extracts from the same, as the said surveyor shall think necessary for securing the payment of the said duties; and if any person shall wilfully refuse to permit such inspection, or such copy to be taken, he or she shall forfeit the sum of 100%.

Sect. 47. That the name and place of abode of every person licensed to let post-horses by the commissioners for managing the duties on stamped vellum, parchment, and paper, under the laws in force, shall annually be transmitted to the office for the affairs of taxes by the said

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.  
Penalty for neglect or omission, 50%.

Forms for entering such accounts may be prepared by the tax-office, and issued to persons applying.

Or the party shall provide proper forms.

Penalty 50%.

Assessor shall certify duty on carriages to commissioners, who shall make assessment.

Gate-keepers and farmers of post-horse duties shall permit surveyors to inspect their certificates.

Penalty, 100%.

Lists of persons licensed to let post-horses shall be annually transmitted to tax-office.

*3. Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.

Horse-dealers at divers places shall deliver returns at each place, &c.

Penalty 20l.

Horse-dealers in London, &c., shall be charged there.

Tax-office may cause lists to be made of persons having made returns, &c.; copies whereof shall be evidence.

Lists of persons charged may be published.

Penalty for defacing such lists, 5l.

Penalty on persons removing without payment of duties, &c., 20l.

Penalty on house-keepers for omitting to return lodgers liable. &c. (see s. 32), shall

commissioners, whenever the said duties shall not be let to farm, or otherwise, by the farmers and collectors of the said duties.

Sect. 48. That every person who hath or shall have divers places in Great Britain, whereat he or she shall use or exercise the trade or business of a horse-dealer, and is or may be desirous of paying the said duties at one of such places, such places not being within different limits, as set forth in the said schedule marked H, subjecting him or her to different duties, shall be obliged to deliver a declaration at each of such places, declaring therein the particular county and parish or place where he or she intends or ought to be charged for the said duty, to enable the assessor or assessors at such place to charge the same accordingly; on pain that every person offending in any of the particulars before mentioned shall be chargeable at either place, and for neglect in making such return shall forfeit and pay the sum of 20l.; provided that every person exercising the said trade in London, Westminster, the liberties of the same, the parishes of Saint Mary-le-bone and Saint Pancras in the county of Middlesex, the weekly bills of mortality, or the borough of Southwark in the county of Surrey, shall be charged and pay the duties in respect thereof in such of the said places where such business shall be carried on within the last-mentioned limits, and not elsewhere.

Sect. 49. That it shall be lawful for the commissioners for the affairs of taxes to cause such list or lists of names and places of abode of persons having made returns in pursuance of this act, or of persons charged to the duties by this act made payable, to be made out for the purpose of being inspected by any person or persons who shall make application to inspect the same, as to them shall seem necessary for the better execution of this act, and to authorise copies of such lists, or any part thereof, to be made out, in such manner, by the several inspectors, surveyors, and officers employed under them, and at such times as to such commissioners shall seem fit; all which lists and copies signed by any inspector, surveyor, or other officer aforesaid, authorised by the said commissioners, shall be admitted as evidence in all courts, and before all persons acting in the execution of this act; and for which copies the fee of 1s., and no more, may be taken for the return of each person contained therein.

Sect. 50. That it shall be lawful for the commissioners for the affairs of taxes, under the direction of the lords commissioners of his majesty's treasury, from time to time, to publish or cause to be published, in the several counties, ridings, divisions, cities, towns, parishes, and places respectively, lists containing the names of any persons charged to the duties made payable by this act, and to cause the same to be published in such manner as they shall direct; and if any person shall wilfully tear, deface, or remove any list of any such names, or any part of such lists that shall be affixed by order of such commissioners as aforesaid upon any church or chapel door, or market cross, he or she shall forfeit for every such offence the sum of 5l.

Sect. 51. That if any person rated and assessed to any of the said duties made payable by this act shall remove out of the limits of the collectors of the said duties who shall be charged to collect the same, without first paying or discharging, or causing to be paid or discharged, all the duties charged upon him or her, and which shall then be due and payable, and without leaving within such limits sufficient goods and chattels whereon the said duties in arrear may be raised and levied, every such person shall for every such offence forfeit and pay over and above the said duties, so left unpaid as aforesaid, the sum of 20l.

Sect. 52. That every occupier of any dwelling-house, or distinct apartment as aforesaid, who shall not return a list of persons residing with him or her as aforesaid, or shall omit any person who ought to have been included therein, and who to his or her knowledge shall

have worn hair-powder, or used any armorial bearing or ensign within the period for which the return should be made, shall be liable to prosecution for the penalty hereby inflicted, and be deemed guilty thereupon, whether it shall appear that the person so omitted, or not returned, hath or hath not for himself or herself made a return at the same or any other place, or hath or hath not been prosecuted for any offence against this act, or is or is not amenable to justice therefor; and the conviction of any person for not returning or omitting any such person as aforesaid shall not be deemed to exempt the person so omitted or not returned from paying the duty by this act imposed, or from prosecution or punishment for any offence against this act; provided that any person residing in any dwelling-house at the time of making such return, as a lodger or inmate, who shall elsewhere have his or her place of ordinary residence, shall be returned as ordinarily residing in such other place.

Sect. 53. That if any person who ought to be charged by virtue of this act, shall, by changing his or her place of residence, or by any other fraud or covin, escape from the taxation, and not be charged, and the same be proved before the commissioners acting in the execution of this act, or any two or more of them, where such person dwelleth or resideth at any time within one year next after such charge ought to have been made, every person that shall so escape from the taxation and payment shall be charged (upon proof thereof) at treble the value of so much as he or she should or ought to have been charged at by this act, the said treble value to be charged in the assessment on such person, and on nonpayment thereof to be levied on the goods, lands, and hereditaments of such person.

Sect. 54. That where any person or persons chargeable with the duties hereby made payable as aforesaid shall be under the age of twenty-one years, or where any person so chargeable shall die, in every such case the parents and guardians of such infants respectively, upon default of payment by such infants, and the executors and administrators of the person so dying, shall be and are hereby made liable to and charged with the payments which the said infants ought to have made, and the persons so dying were chargeable with; and if such parents or guardians, or such executors or administrators, shall neglect or refuse to pay as aforesaid, it shall be lawful to proceed against them in like manner as against any other person or persons making default of payment of the duties hereby made payable; and all parents and guardians, making payment as aforesaid, shall be allowed to deduct all and every sum and sums paid for such infants in his, her, or their accounts; and all executors and administrators shall be allowed to deduct all such payments out of the assets and effects of the person so dying.

Sect. 56. That in England, Wales, or Berwick-upon-Tweed, the ward, parish, or place in which any assessment shall be made of the said duties shall be answerable for the amount of the duties which shall be charged in such ward, parish, or place, and for the said duties being duly demanded of the respective persons charged therewith, within ten days after the same are payable by virtue of this act by the collector or collectors of such ward, parish, or place; and also for such collector or collectors, his, her, or their executors or administrators, duly paying the sums received by such collector or collectors, to the receiver-general of the said duties, according to this and the said first-recited act; and

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161. be recovered, though the lodger make his return, &c.

Persons fraudulently escaping taxation, may be charged treble the duties at any time within one year.

Parents and guardians shall pay duties charged upon infants and executors, &c.

Assessments on persons deceased.

Parishes in which assessments are made, shall be answerable for the duties, and for payment by collectors under this act and 43 Geo. 3, c. 99. (u)

(a) See observations in *The Earl of Shaftesbury v. Russell*, 3 D. & R. 84; 1 B. & C. 669; *Juson v. Dixon*, 1 M. & Sel. 601; *ante*, p. 803. As to reassessment, see 20 Geo. 2, c. 3, s. 34; 25 Geo. 3, c. 47, s. 25; *Rex v. In-*

*habitants of St. George's Hanover Square*, 3 Anst. 920; *Barrs v. Digby*, 1 New R. 287; *Ex parte Parish of Henllan*, 7 Price, 594; *Wightw.* 1; 46 Geo. 3, c. 65, ss. 189, 190.



3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.

Arrears shall be re-assessed (a).

Deficiencies of duties in Scotland from default of collectors under this act and 43 Geo. 3, c. 150, shall be re-assessed.

Persons shall not be assessed to poor's rate, &c., for duties under this act.

Payment of duties shall not confer a settlement.

Assessors to bring in certificates of assessments for duties, with names of persons claiming exemptions, &c., according to the regulations of 43 Geo. 3, c. 99; (and see c. 150.) (b)

\* Repealed.

every arrear of the said duties arising from the default as aforesaid, or by the failure of any collector for which any ward, parish, or place as aforesaid shall be answerable, shall be re-assessed within or upon such ward, parish, or place, as soon after such default shall be discovered as conveniently can be done, and shall respectively be charged on the amount of the assessment which shall be made for the same duties in the year commencing from the fifth day of April preceding the time of making such re-assessment, by duly apportioning the amount of such arrear amongst the several persons assessed in that year to the same duties respectively on which such arrear shall have accrued, according to each person's assessment thereof, as nearly as the case will admit, and by the like rules, methods, and directions by which the original assessment was made of the same duties, to be raised and levied in such manner as any assessment may be by this act raised and levied.

Sec. 57. That in case the duties assessed in Scotland shall not be paid to the receiver-general by reason of any failure of the collector, either in the performance of his duty, or in not paying over the monies received by him according to the directions of this and the said last-recited act, and any deficiency shall remain after diligence used against such collector, or his surety or sureties, or, in case of death, against his executors or administrators, then and in such case the commissioners acting in the execution of this act for the shire, stewartry, city, or borough in Scotland, where such failure has happened, shall, and they are hereby authorised and required to cause the deficient sum to be re-assessed, as soon after such deficient sum has been ascertained as can be done, upon those persons subjected to the payment of the like duties in the year when the re-assessment shall be made, by duly apportioning the amount of such deficiency amongst them according to each person's assessment as near as the case will admit, and by like rules and modes by which the original assessments were made of the duties assessed in that year, which sum so re-assessed shall be levied and collected in such manner as the said duties may be raised and levied in Scotland.

Sec. 58. That no person or persons shall be charged or assessed to the poor's rate or contribution for the poor, or to the highway duty or commutation of statute labour, for or in respect of any duties made payable by this act, but that such owners and occupiers shall continue to be rateable to the said rates, contributions, and duties, in such manner as they might have been rated and assessed to the same respectively, before the passing of this act.

Sec. 59. That the payment of any of the duties made payable by this act, by any person or persons, in any parish or place, shall not entitle the person or persons so paying such duties to a settlement in such parish or place.

Sec. 62. That the respective assessors acting in the execution of this act shall bring in their certificates of assessments, in writing under their hands, within the limited time by the said recited act of the present session of parliament, to be verified as therein directed, of every dwelling-house, inhabited or not inhabited, within the limits of those places for which they are to act, [and of the number of windows or lights in each house \*], and the full and just yearly rent which every such dwelling-house, with the offices and premises hereby charged, is really worth, estimated according to this act, together with the names and surnames of the several occupiers or inhabitants of each dwelling-house, and also the greatest number of male servants, or other male persons herein described, carriages, horses, and mules, which shall have been retained, kept, or used, within the then preceding year, for which the persons retaining, keeping, or using the same,

(a) See *ante*, p. 810, note (a).

(b) See note to s. 27.

ought to be assessed to any of the duties made payable by this act for the current year, within the limits of those places for which they act, and the names and surnames of the several persons who shall have retained, kept, or used the same; and also the names and surnames of all persons within such limits liable to the duties, in respect of their trade or business of a horse-dealer, or of their trade or business of a coachmaker, or maker of carriages, or seller of carriages by auction or on commission, or in respect of hair-powder, or any armorial bearings or ensigns, worn or used by them, and of the several sums of money they respectively ought to pay by virtue of this act, in each case respectively, without concealment or favour; and also the names and surnames of those who have claimed exemptions from the said duties, or any of them, and the causes of such exemption, under the penalty contained in the said recited act, observing therein, as to the time of bringing in such certificates, the regulations of the said recited act.

Sect. 63. That the surveyors or inspectors appointed or to be appointed, as herein mentioned, shall be and they are hereby empowered to inspect and examine all and every the returns of lists or declarations made by any person or persons chargeable to the said duties, or any of them, according to the directions of this act, and also all and every the assessments of the said duties, or any of them, made for any parish or place, as well before as after the commissioners shall have signed and allowed the said assessments, and, before such allowance, to correct and amend such assessments, if he or they shall see fit; and every person in whose custody any such lists shall be, shall and is hereby required, upon the request of any such surveyor or inspector as aforesaid, to deliver the same into his custody for the purposes of this act, taking his receipt for the same; and every person in whose custody any such assessment shall be, shall and is hereby required, upon the request of such surveyor or inspector, as aforesaid, to produce the same; and such surveyor or inspector is hereby authorised to take charge of the same until he shall have taken such copies of or extracts from the same, as may be necessary for his and their better information; and if any such surveyor or inspector shall, after any such list or lists, and assessment or assessments shall be so respectively made out, signed, and allowed, as aforesaid, find or discover, upon his survey or examination or otherwise, that any person who ought to be charged with the said duties, or any of them, shall have been omitted to be charged therewith, or shall have been under-rated, or that any person liable to the said duties, or any of them, in respect of which such lists or declarations, as aforesaid, ought to have been delivered, hath not made any return, as by this act is required, or hath omitted any person, or any description, or any article, matter, or thing, which ought to have been returned, so that he or she shall not have been charged to the amount which ought to be paid by him or her, or that any exemption shall have been claimed which is not allowed by this act; then, and in every such case, the said surveyor or inspector shall certify the same in writing under his hand, together with an account of every default and omission, with the name or description of the person or thing not returned or omitted, to the best of his knowledge and belief, and the full amount of the duty which ought to be paid by way of surcharge, to any two or more of the said commissioners for putting in execution this act, in order to have such default, omission, or under-rate, rectified in the said assessment; and such commissioners are, upon the delivery of any such certificate, and upon oath being first made that such notice as hereinafter directed was given to or left in writing at the dwelling-house, or other place of abode, of the person so surcharged, required to sign and allow the said surcharges, and to cause the said assessments to be rectified, and the said duties to be levied accordingly; and the said inspectors and

3. Of the Assessed Taxes themselves.

43 Geo. 3, c. 161.

Inspectors and surveyors may inspect returns and assessments, and amend the latter before they are allowed by commissioners,

and after allowance may certify omissions, &c., by way of surcharge,

which surcharge (on oath being made of notice to the party) commissioners shall allow.

### 3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.  
Notice to parties.  
Surcharges to be made as under 43 Geo. 3, c. 99 and 150, in full amount of duties in schedules (A.) and (B.), and in double the other duties (see s. 71).

\* Now repealed.

Assessments or surcharges shall not be impeached on account of mistakes in names or descriptions. (a)

Surcharge avoided by delivering lists on oath (see s. 56).

or on objection, of surveyor, assessment shall be made in double duty, subject to appeal.

surveyors shall give or cause to be given to every person so surcharged, or leave or cause to be left at his or her last or usual place of abode in the district where such surcharge was made, notice in writing of such surcharge and of the amount for which he or she shall have been charged by virtue of such certificate; which surcharges the said inspectors and surveyors are hereby empowered to make from time to time, and at such times as directed by the said recited acts respectively of the present session of parliament, and such surcharges shall be made in [the full amount of the duty which ought to be charged by virtue of such certificate, in respect of the duties contained in schedules (A.) and (B.)\*], and in double the amount of the duty which ought to be charged by virtue of such certificate, in respect of all or any of the duties contained in the other schedules to this act annexed.

Sect. 64. That no assessment or surcharge made or to be made by any assessor or assessors, surveyor or surveyors, inspector or inspectors, by virtue of this act, shall be impeached or affected by reason of any mistake or variance in the christian or surname, or either of them, of any person liable to any of the duties made payable by this act, or of any servant or other male person herein described, or in the description of their employments, nor by reason of any mistake in the description of any carriage, horse, or mule, as required by this act, or the amount of the duty surcharged, whether such mistake or variance shall appear in the notice and certificate to be delivered or made in such case, or in either of them; but that all such assessments and surcharges shall be valid and effectual to all intents and purposes, notwithstanding any such mistake or variance, provided the notice of surcharge be delivered to or left at the place of abode of the person intended to be so surcharged, according to the directions of this act, and the person or persons intended to be described shall be liable to the said duties, or shall be a servant or servants of or otherwise employed by the person or persons so surcharged, or the carriage, horse, or mule, intended to be described, shall belong to, or the duty intended to be described, shall be chargeable on such person or persons.

Sect. 65. That it shall be lawful for any person to whom such notice of surcharge shall be given as aforesaid, on occasion of his or her having neglected to make any return, as required by this act, at any time previous to the time appointed for hearing appeals next after the delivery of such notice, to make out and deliver to the surveyor or inspector, who shall have delivered the notice of surcharge, a true, perfect, and complete list or lists, or declaration or declarations, in the forms directed by this act, and as the case may require, so that he or she may, from such last-mentioned lists or declarations, so delivered, be charged to the said duties the full sum at which he or she ought to be charged by virtue of this act; provided that, to every such list or declaration, there shall be annexed an affidavit in writing, to the effect hereinafter mentioned; and if the said surveyor or inspector shall be satisfied with such list or declaration and affidavit, then he shall certify such return and affidavit to two or more of the said commissioners, with the amount of the duty to be charged, who shall thereupon cause the assessment to be made according to such certificate, and the same rate of duty as set forth in the schedules to this act annexed to be charged on the person making such return, without further trouble or delay; but if, upon examination of such list or declaration, or such affidavit, the said surveyor or inspector shall see just cause to object thereto, he shall thereupon certify such return and affidavit, together with the cause of his objection, to two or more of the said commissioners, who shall thereupon cause the assessment to be made according to such last-mentioned certificate, in double the amount of the duty

at which such person shall be surcharged; and from which charge no abatement shall be made on any pretence, unless on appeal, as hereinafter is directed; of which certificate notice shall be given by the surveyor to the person to be charged thereby.

Sect. 66. That every such affidavit shall allege and declare in substance or to the effect as follows: (that is to say,) that the deponent was not at his or her dwelling-house, or other place of abode, at the time appointed for the fixing or delivery of general or other notice, for making a return as required by this act, nor between that day and the time limited for making such return to the assessor, and that he or she had not any such notice; or, that he or she was disabled by sickness from making such return; or, that the non-delivery of such return was occasioned by the following unavoidable mistake or accident, without any intention to defraud the revenue; *videlicet* [*here set forth the cause of such default*]; and that the return annexed to this affidavit is a full, perfect, and complete return of all matters and things required of the said deponent by this act, to the best of his or her judgment; which affidavit may be taken before any one or more of the commissioners acting for the place where the surcharge shall be made, or where the party surcharged shall reside, and shall be signed by the party making the same.

Sect. 67. That it shall be lawful for any person to whom such notice of surcharge shall be given, on occasion of his or her having omitted in the return made any person or description, or any article, matter, or thing, which ought to have been contained therein, or of having claimed any exemption not allowed by this act, to amend such return, by delivering to the surveyor or inspector, as aforesaid, a new return, according to the directions before given, to which an affidavit shall be annexed, to the effect hereinafter mentioned; and the said surveyor or inspector shall be at liberty to certify his satisfaction therewith, or his objection thereto, in the manner hereinbefore directed, according to which certificate, the party surcharged shall be assessed in the single duty to the full amount at which he or she shall be chargeable, or in the double duty on the amount of the duty so surcharged, as the case may require, subject to the like power of appeal from such charge in the double duty, and to the like proceedings, in all other respects, as are before given and directed.

Sect. 68. That every such last-mentioned affidavit shall allege and declare the grounds and cause of each omission, or claim of exemption, as well to matter of law as fact, whether the deponent shall persist in such omission or claim, or not, and also that the return annexed to this affidavit is a full, perfect, and complete return of all matters and things required of the said deponent by this act, to the best of his or her judgment and belief, and that such omission or claim was not made with intention to defraud the revenue, which said last-mentioned affidavit shall be made and signed in the manner before directed.

Sect. 69. That an appeal may be made from any assessment or surcharge as aforesaid, and heard and determined under the regulations of the said recited acts respectively, and that such appeal may be made in the like cases as are mentioned in the said recited acts respectively, and also in the case hereinafter mentioned.

Sect. 70. That if any person or persons shall think himself, herself, or themselves respectively overcharged or over-rated by any certificate of any inspector or surveyor as aforesaid, or by any assessment to be made by virtue or in pursuance of such certificate, it shall be lawful for him, her, or them respectively, to appeal to the said commissioners in such manner as they are authorised to appeal from any original assessment or surcharge by the regulations of the said recited acts respectively; and upon the hearing of any such appeal, or the appeal against any such original assessment or surcharge, the appellant shall,

### 3. Of the Assessed Taxes themselves.

43 Geo. 3, c. 161.

Form of affidavit to be annexed to return (see s. 65).

On omissions in returns, surcharge may be avoided by new return on oath (and proceedings as under s. 65).

Form of affidavit in aid of defective returns.

Appeals shall be heard as under 43 Geo. 3, c. 99 and 160 (and see s. 70).

Persons aggrieved by certificate of assessors may appeal.

Lists on oath required in all cases of appeal.

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.

Assessment shall be made in double duty where surcharge is confirmed on appeal, &c. ;

but commissioners may remit, not exceeding one moiety.

Inspector, &c., to receive overplus above the rates of duty.

Penalty on inspector or surveyor making false surcharge, &c., 50*l*.

Not to defeat any action against surveyor under 43 Geo. 3, c. 90, s. 23, or c. 150, s. 19.

Court may mitigate penalty.

Assessors, &c., or appellants, may demand a case for the opinion of a judge.

in all cases, where a list or declaration shall or ought to have been delivered by the said appellant to the assessor, produce before the said commissioners a true, perfect, and complete list or lists, and declaration or declarations, as the case may require, and verify the same on his or her oath or affirmation.

Sect. 71. That upon every surcharge confirmed by the said commissioners on appeal, according to the regulations of the said recited acts respectively, and also upon every surcharge allowed by the said commissioners upon the certificate of the surveyor or inspector as directed by this act (except in cases where sufficient returns, upon affidavit, have been supplied as aforesaid), the assessments shall be made in double the rates of duty prescribed in the schedules annexed to this act on the amount of the duty so surcharged, which sum shall be added to the assessment, and inserted in the duplicates of the collectors, and collected and levied therewith, and paid to the receiver-general: provided always, that upon every such appeal, if the said commissioners shall be of opinion that there was any just cause or controversy on the part of the appellant on the subject-matter of appeal, and that the alleged default, neglect, omission, or claim, was not wilfully made, and with intention to defraud the revenue, it shall be lawful for the said commissioners who shall have determined the said appeal, although they shall have confirmed or allowed the surcharge, at the same time to remit and strike off any part of the double duty, not exceeding one moiety of the charge above the rates of duty prescribed by the said schedules; and the assessor, surveyor, or inspector, so making such surcharge, shall be, and is hereby entitled to, and shall have and receive for his own use, from the receiver-general to whom the duties shall be paid, the overplus of the sum so charged above the said rates of duty, as prescribed in the said schedules, which overplus the commissioners for executing this act, who shall have confirmed such surcharge, or any two or more of them, shall, at the same meeting, certify, under their hands, to the commissioners for the affairs of taxes, and the certificate of the said commissioners for the affairs of taxes shall be a warrant to the said receiver-general to pay the same.

Sect. 72. That if any inspector or surveyor shall wilfully make any false and vexatious surcharge, or wilfully deliver or cause to be delivered to the commissioners for executing this act any false and vexatious certificate of charge, every such inspector or surveyor shall forfeit to the party aggrieved any sum not exceeding 50*l*., to be recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, for offences committed in England, and in the Court of Great Sessions for offences committed in Wales, and in the Courts of Session or Exchequer for offences committed in Scotland, with full costs of suit: provided always, that nothing hereinbefore contained, nor any suit by the party aggrieved, in pursuance of this act, shall be construed to affect, impeach, or defeat any action or information brought or to be brought against any surveyor or inspector, in pursuance of the said recited acts respectively, for any corrupt, vexatious, or illegal practices in the execution of his office; and it shall be lawful for the judge before whom such inspector or surveyor shall have been convicted of such offence, by indorsement on the postea, or for the court before whom such person shall be convicted, to mitigate the penalty at his or their discretion.

Sect. 73. That if any such assessor or assessors, surveyor or surveyors, inspector or inspectors, or the persons appealing either against the original assessment or surcharge, or against the certificate of the inspector or surveyor as aforesaid, or against the assessment to be made thereupon, shall apprehend the determination made by the said commissioners to be contrary to the true intent and meaning of this act, and shall then declare himself or herself dissatisfied with such determination, it shall be lawful to and for such assessor or assessors,

surveyor or surveyors, inspector or inspectors, or appellant respectively, to require the said commissioners to state specially, and to sign the case upon which the question arose, together with the determination thereupon, which case the said commissioners, or the major part of them then present, are hereby required to state, and sign accordingly, and to cause the same to be delivered to the party making such request as aforesaid, to be by him or her transmitted, if in England, Wales, or Berwick-upon-Tweed, to one of the justices of the Court of King's Bench or Common Pleas, or to one of the barons of the Court of Exchequer for the time being at Westminster, and if in Scotland, to one of the lords of the court of session, or the barons of the Court of Exchequer in Scotland; and every such judge is hereby required, with all convenient speed, to return an answer to such case so transmitted, with his opinion thereon subscribed thereto, according to which opinion, so certified, the assessment which shall have been the cause of such appeal shall be altered or confirmed; provided always, that where the opinion of such judge shall be in support of any surcharge, the assessment thereupon shall be made in the double duty, or shall be mitigated to such sum as shall have been determined by the commissioners at the time of the appeal: provided also, that notwithstanding any such case so transmitted to any of the said judges, the instalment on the assessment as determined and allowed by the said commissioners, which shall become due precedent to the opinion being certified by any such judge upon such case, shall be collected and levied as if no such case had been transmitted.

Sect. 74. That if, according to the opinion of any of the said judges to whom any case shall, at the request of the appellant or appellants, be transmitted in pursuance of any of the directions contained in this act, the charge or surcharge upon which the question contained in such case shall have arisen shall be confirmed and established, the person or persons so charged or surcharged shall, for the costs and charges attending the same, pay to the use of his Majesty, his heirs and successors, the sum of 40s., in addition to the assessment or surcharge so confirmed and established as aforesaid, and which costs shall be added to such assessment, and levied and collected therewith, and as part of the duties so assessed.

Sect. 75. That whenever any case or cases to be transmitted to any of the said judges for his or their opinion thereon, in the manner directed by this act, shall have been obtained by any inspector or inspectors, surveyor or surveyors, or assessor or assessors, by reason of any surcharge or surcharges, or any certificate not being allowed by the commissioners for executing this act, and the same shall not be returned within the time hereby limited for delivering the duplicates to the receivers-general, and the office of the king's remembrancer, whereby the passing of the accounts of the receivers-general may be impeded, it shall be lawful for the commissioners, and they are hereby required to cause to be made out the duplicates of the several assessments required to be delivered to the respective receivers-general, and into the office of the king's remembrancer, exclusive of the sums so depending, to the end that there may be no delay in paying into the receipt of the exchequer the sums assessed and fully charged; and that, upon the return of such opinion, whenever the same shall happen, the said commissioners shall cause separate assessments to be made out, including therein the names of the party or parties in the case or cases so transmitted, and the amount of the sums wherewith the party or parties ought to be charged, according to such opinions so returned; and the sums so assessed to be levied in like form and manner as any assessments may be levied, and to be paid to the respective receivers-general; and shall also cause true supplemental duplicates of all such separate assessments to be made out as soon as conveniently may be done, and delivered unto the respective receivers-general, and also

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 181.

If surcharge confirmed, assessment shall be in double duty, &c., as on appeal

40s. costs on appellant having demanded a case, if surcharge confirmed.

When cases obtained by inspectors, &c., shall not be returned within the time for delivering duplicates to receivers-general. (See 43 Geo. 3, c. 99, s. 46, c. 150, s. 41.)

Commissioners shall make out duplicates of assessments.

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.  
Commissioners may grant relief in cases of double assessment.

Penalty on altering assessment, 50*l*.

Letters patent not to exempt.

Treasury to appoint salaries to officers and pay incidental expenses.

Penalties recoverable as under in England, 43 Geo. 3, c. 90, and c. 150, in Scotland.

Time of payment of duties by collectors to the receivers-general,

transmitted into the office of the king's remembrancer, for which supplemental duplicates the proper officers shall give acquittances *gratis*, so as every of them may be duly charged to answer the whole of their respective collections and receipts.

Sect. 76. And to the end that no person may pay the same duties for the same articles in more parishes or districts than one for the same year, be it further enacted, that if any person, having been assessed under this act in one parish or district to the duties made payable by this act, or any of them, shall be again assessed in another parish or district for the same cause and on the same account, in such case the commissioners for this act within such latter parish or district, or the majority of the said commissioners present, on any application for the purpose, may and are hereby required to alter any assessment of such person so assessed twice, on proof given before them that such person hath before been assessed for the same cause, and on the same account, in another place, and in what place specifically, and hath paid or is liable to pay the duties for the same upon such assessment, which proof shall be made by the oath or affirmation of the party, or some credible witness, that the several assessments are for the same cause and on the same account, and by the production of either a copy or certificate of the first assessment, signed by two or more commissioners of the district for which such first assessment shall have been made, to be verified on oath or affirmation as aforesaid, which copy or certificate the clerk of the said commissioners shall deliver *gratis* to the party requiring the same; or, in default of such copy or certificate, then the proof thereof shall be made by other evidence on oath or affirmation as aforesaid, to the satisfaction of the commissioners present, or the majority of them; and if any person shall, by any fraudulent contrivance whatever, procure any assessment to be altered, with intent to defraud his Majesty, his heirs or successors, of the said duties, or any part thereof, every such person shall for every such offence forfeit the sum of 50*l*.

Sect. 77. That no letters patent granted by his Majesty, or any of his royal progenitors, or to be granted by his Majesty, to any person or persons, cities, boroughs, or towns corporate, within this realm, of any manner of liberties, privileges, or exemptions from subsidies, tolls, taxes, assessments, or aids, shall be construed or taken to exempt any person or persons, city, borough, or town corporate, or any of the inhabitants of the same, from the burden and charges of any of the said duties; and all *non obstantes* in such letters patent made or to be made in bar of this act are hereby declared to be void and of none effect; any such letters patent, grants, or charters, or any clause of *non obstante*, or other matter or thing therein contained, or any law or statute to the contrary notwithstanding.

Sect. 78. That out of the monies from time to time arisen or to arise of or from the said duties made payable by this act, it shall be lawful to and for the said commissioners of the treasury, or any three or more of them, now or for the time being, or the high treasurer for the time being, to settle and appoint such salaries and allowances for the service, pains, and labour of the surveyors, inspectors, and other officers to be employed in the execution of this act, and otherwise in relation thereto, and also to discharge such incident charges and expenses as shall necessarily attend the execution of this act, as the said commissioners of the treasury, or any three or more of them, or the high treasurer for the time being, shall think fit and reasonable in that behalf.

Sect. 80. That all pecuniary penalties and forfeitures imposed by this act shall and may be sued for, recovered, and applied in such manner and form as is directed by the said recited acts respectively in regard to the pecuniary penalties and forfeitures thereby imposed.

Sect. 81. That the collectors shall pay over the whole of the sums by them received by virtue of this act, in manner and upon the days of payment following; that is to say, in England, Wales, and Berwick-

upon-Tweed, the same shall be paid quarterly unto the respective receivers-general, or their respective deputies, within twenty days after the respective days appointed for the payment thereof, at such places as shall be appointed by such receivers-general, and the said receivers-general shall cause the same to be paid into the receipt of his Majesty's exchequer at Westminster, before the end of the quarter in which the same shall be received, according to the provisions of the said first recited act; and in Scotland the same shall be paid half-yearly to the receiver-general at Edinburgh, *videlicet*, on or before the 25th day of December, for the first half-year's instalment of the said duties, and on or before the 24th day of June for the last half-year's instalment of the said duties in every year; and the said receiver-general shall, within forty days after the said respective days, remit and pay the same into the said receipt, according to the provisions of the said last recited act.

Sect. 82. That all monies arising from the said duties (the necessary charges of raising and accounting for the same excepted) shall from time to time be paid into the receipt of his Majesty's exchequer at Westminster, distinctly and apart from all other branches of the public revenues; and that there shall be provided and kept in the office of the auditor of the said receipt, a book or books, in which all the monies arising from the said duties, and paid into the said receipt as aforesaid, shall be entered separate and apart from all other monies paid and payable to his Majesty, his heirs and successors, upon any account whatever; but nevertheless without entering the different proportions thereof, in separate accounts, as directed by any act or acts hereby repealed; and the said monies so paid into the said receipt shall be carried to and made part of the consolidated fund of Great Britain.

Sect. 83. And whereas, by divers of the said acts hereby repealed, it is provided, that the new or additional duties hereby granted should, during the space of ten years, then next ensuing, be kept in the office of the auditor of the said receipt of exchequer, in a book or books, together with such other duties as were respectively granted for the purpose of making permanent additions to the public revenue, and of defraying any charges occasioned by certain loans made and stocks erected by authority of parliament, and separate and apart from all other monies paid or payable to his Majesty, his heirs or successors, upon any account whatever; and whereas it is expedient that the whole of the duties contained in each schedule should be entered in one account; be it therefore enacted, That from and after the respective period appointed for the commencement of this act, in the respective parts of Great Britain herein mentioned,\* the monies arising from the duties contained in the same schedule shall be paid into the said receipt in one sum, and the account thereof shall be there kept in one sum; and the monies arising from each separate schedule, marked A, B, C, D, E, F, G, H, I, and K, shall be paid into the said receipt, separate and distinct from each other; and separate accounts shall be there kept of the same; provided always, that the commissioners of his Majesty's treasury, now or for the time being, or any three or more of them, or the lord high treasurer for the time being, shall from the respective periods appointed for the commencement of this act, during the remainder of the ten years mentioned in the acts hereby repealed, in respect of the new or additional duties thereby respectively granted, and for the period of ten years from the commencement of this act, in respect of the new duties by this act granted, cause separate and distinct accounts of the different parts of the said duties, and of the amount thereof, to be prepared at the office for taxes, to be annually laid before parliament, pursuant to the provisions contained in an act passed in the forty-second year of the reign of his present Majesty, intituled, "An Act

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.  
and by them into  
exchequer.

Duties shall be  
carried to British  
consolidated fund.

Distinct accounts  
to be kept of  
monies arising  
from duties con-  
tained in each  
schedule.

\* See s. 1.

And annually laid  
before parliament,  
according to 42  
Geo. 3, c. 70.



3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.  
Apportionment of duties.

\* Query?

See 42 Geo. 3, c. 34, s. 40.

Repeal of former duties, and of such parts of acts as relate to those duties.

Limitation of actions, six months (a).

One month's notice.

Tender of amends.

General issue.

Treble costs.

for directing certain Public Accounts to be laid annually before Parliament, and for discontinuing certain other Forms of Account now in use : " provided always, that a separate account shall be kept and made out of the said new duties ; and that to such account there shall be added, in respect of the new duties on windows or lights granted by this act, by the manner of charging the same according to their respective dimensions, such further sums as shall appear to be the increase occasioned thereby, which increase shall be always taken to be the excess over and above the several sums of 327,900*l.*, 515,000*l.*, 36,000*l.*, 36,000*l.*, 51,500*l.*, and 441,496*l.*, directed by the several acts hereby repealed to be entered in separate accounts in the books of the said receipt, and of the further sum of 490,000*l.*, being the computed annual amount of the rates and duties granted by the said act, passed in the forty-third year \* of the reign of his present Majesty, amounting together to the sum of 1,897,896*l.* : and that the excess of the said rates and duties above the said sums shall be deemed a permanent increase to the public revenue of Great Britain, for the purpose of defraying any increased charge occasioned by any loan made or stock created by authority of any act of parliament passed in the present session of parliament.

By sect. 84, the several rates and duties contained in any acts named in sect. 85, in lieu whereof other duties are by this act substituted, and such parts of the several provisions of the said acts which relate to the duties made payable by this act, are repealed.

Sect. 86. That if any action or suit shall be brought against any person or persons for anything done in pursuance of this act, or any act for granting duties to be assessed under the regulations of this act, such action or suit shall be commenced within six calendar months next after the fact committed, and not afterwards; and shall be laid in the county or place where the cause of complaint did arise, and not elsewhere; and no writ or process shall be sued out for the commencement of such action or suit, until one calendar month next after notice in writing shall have been delivered to or left at the usual place of abode of such person or persons, by the attorney or agent for the intended plaintiff or plaintiffs, in which notice shall be clearly and explicitly contained the cause and causes of action, the name and place or places of abode of the intended plaintiff or plaintiffs, and of his and their attorney or agent, and no evidence shall be given on the trial of such action or suit of any cause or causes of action, than such as is or are contained in such notice; and the intended defendant or defendants to whom such notice shall have been delivered, may at any time before the expiration of such calendar month tender amends to the intended plaintiff or plaintiffs, his or their attorney or agent; and in case such amends are not accepted, may plead such tender in bar to any action or suit to be brought against him or them, grounded on such notice, writ, or process; and the defendant or defendants in every such action or suit may plead the general issue, and also such tender, and any other plea, with leave of the court, in bar of such action or suit, and may give this act and the special matter in evidence at any trial to be had thereupon: and if the jury shall find for the defendant in any such action or suit, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his, her, or their action or suit, after the defendant or defendants shall have appeared; and if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and have the like remedy for the same as any defendant hath in any other case to recover costs by law; and every such action or suit which shall be brought against any collector or collectors appointed under this act shall be defended by the commissioners acting for the division or place where

(a) As to the construction of clauses of this kind in general, see "*Justices.*"

such collector shall have been appointed, and the costs and charges attending the same, as also every other action or suit to be brought by or against commissioners or collectors in pursuance of this act, or for anything done in pursuance of this act, or any act for granting duties to be assessed under the regulations of this act, shall be defrayed by an assessment made on the parish or place for which such collector or collectors shall have been appointed, in a just proportion to the amount of the duties payable under this act, on the respective persons charged to the same in the assessment to be made next after the time when the said costs and charges shall have been incurred.

After the 43 Geo. 3, c. 161, several statutes, already referred to, were passed. Those most important are—

The 48 Geo. 3, c. 55, by which the then duties of assessed taxes, and the stamp duties on game certificates were repealed, and new duties granted, to be placed under the management of the commissioners for the affairs of taxes. These last have been repealed, and are now replaced by others under 14 & 15 Vict. c. 36, and 16 & 17 Vict. c. 90, *post*, pp. 905, 906.

The 52 Geo. 3, c. 93, granting new and additional duties.

52 Geo. 3, c. 93.

The 54 Geo. 3, c. 141, enacts, that the duties in schedule 52 Geo. 3, c. 93, relating to persons *assisting* in killing of game, shall cease, if assistance be given to another who has obtained a certificate, &c.

54 Geo. 3, c. 141.

By 3 Vict. c. 17, s. 8, upon all assessments made or to be made for the year commencing on the 6th of April, 1840, or for any subsequent year, of the duties of assessed taxes, chargeable or to become chargeable under or by virtue of 48 Geo. 3, c. 55, and also 52 Geo. 3, c. 93, for or in respect of the several matters and things mentioned and set forth in the several schedules to the said acts respectively annexed, or under or by virtue of any other act or acts for altering or reducing any of the said duties, or for granting any other duties to be assessed or charged under the rules or regulations of the said last-recited acts or either of them, or for authorising compositions to be made for any of the said duties, there shall be assessed, raised, levied, and paid, unto and for the use of her Majesty, her heirs and successors, in and throughout Great Britain, a further additional duty of two shillings for every twenty shillings, and at and after the like rate for any greater or less sum than twenty shillings, of the gross amount of the said former duties and compositions respectively chargeable in any such assessment, under or by virtue of any such act or acts as aforesaid now in force, which said additional duty shall be computed on the total amount of the sums assessed or charged for such duties or compositions as aforesaid on each of the several persons named in every such assessment, but no fractional part of one penny of the said additional duty shall be payable.

3 Vict. c. 17.

An additional duty of 10l. per cent. on the duties of assessed taxes granted.

48 Geo. 3, c. 55.

52 Geo. 3, c. 93.

Sect. 9. That the commissioners authorised or appointed, or who shall be authorised or appointed to put in execution the several acts relating to the said former duties of assessed taxes or any of them, on the amount of which the said additional duty is hereby imposed, shall be commissioners for executing this present act; and that the several surveyors, inspectors, assessors, and collectors respectively appointed or to be appointed to put in execution the said several acts before mentioned, or any of them, shall be surveyors, inspectors, assessors, and collectors to put in execution this present act, according to the respective powers and authorities given to them by the said former acts or any of them; and the said commissioners and other the persons aforesaid, being duly qualified to act in the execution of the said several acts relating to the said former duties of assessed taxes or any of them, shall and they are hereby respectively empowered and required to do all things necessary for putting this act in execution with relation to the said further additional duty hereby imposed in respect of the said duties of assessed taxes, in the like, and in as full and ample

3. *Of the Assessed Taxes themselves.*

43 Geo. 3, c. 161.

Expenses of actions by or against commissioners, &c., shall be defrayed by assessment.

The subsequent Acts.

48 Geo. 3, c. 55.

52 Geo. 3, c. 93.

54 Geo. 3, c. 141.

3 Vict. c. 17.

An additional duty of 10l. per cent. on the duties of assessed taxes granted.

48 Geo. 3, c. 55.

52 Geo. 3, c. 93.

Commissioners, &c. appointed to put in execution former acts relative to the duties of assessed taxes to put in execution the present act with relation to the additional duty thereon.

3. *Of the Assessed Taxes themselves.*

3 Vict. c. 17.

The assessors to ascertain amount of additional duty on assessed taxes, and to certify same to commissioners.

Additional duties of assessed taxes to be ascertained, collected, &c., in like manner as former duties.

a manner as they or any of them are or is authorised to put in execution the said former acts relating to the said duties of assessed taxes, or any matters or things therein respectively contained.

Sect. 10. That upon every assessment made or to be made after the fifth day of April 1840, of the said duties of assessed taxes under or by virtue of the said acts now in force, or any of them, the assessors appointed or to be appointed to make such assessments, and in their default the respective surveyors and inspectors appointed or to be appointed in pursuance of the said several acts or any of them, shall ascertain the amount of the said further additional duty hereby imposed on each of the several persons named in every such assessment, and shall certify and return the same upon such assessments to the respective commissioners authorised to put the said acts in execution at their respective meetings to be held for returning such assessments in all and every the respective counties, shires, stewardtries, ridings, divisions, cities, boroughs, cinque ports, towns, and places respectively, or at such other time or times as the said commissioners shall respectively appoint in that behalf; which said further additional duty so certified shall be added to the amount of the former assessed duties, and shall be collected, raised, levied, and received under the rules, regulations, and directions prescribed by the said former acts, subject nevertheless to such proportional increase or abatement in the amount thereof as shall be necessary in case the said former duties so assessed shall be increased or diminished by any surcharge thereupon or appeal therefrom, in pursuance of the said former acts.

Sect. 11. That the said additional duty by this act imposed upon the amount of the several former duties of assessed taxes as aforesaid shall and may be respectively ascertained, managed, collected, paid, recovered, paid over, and accounted for, under such penalties, forfeitures, and disabilities, and according to such general rules, methods, and directions, by which all the said former duties on the amount of which the said additional duty is by this act imposed, or according to such special rules, methods, and directions by which such of the said former duties upon the amount of which the said additional duty may be chargeable by virtue of this act were or might be ascertained, managed, collected, paid, recovered, paid over, and accounted for, except as far as any of the said rules, methods, and directions are expressly varied by this act; and all and every the powers, authorities, rules, directions, penalties, forfeitures, clauses, matters, and things contained in any act or acts relative to the said former duties of assessed taxes, or any of them, now in force, and not hereby otherwise provided for, for the computing, surcharging, recovering, paying, and accounting for the said duties, by any former act or acts granted, so far as the same are applicable to the additional duty by this act imposed, and not repugnant to the peculiar directions of this act, shall be in full force, and be duly observed, practised, and put in execution for computing, surcharging, recovering, paying, and accounting for the said additional duty by this act granted, as fully and effectually to all intents and purposes as if the same or the like powers, authorities, rules, directions, penalties, forfeitures, clauses, matters, and things were particularly repeated and re-enacted in the body of this present act.

## Secondly—THE DUTIES,

*With the particular Rules and Exemptions affecting them.*

The schedules of 43 Geo. 3, c. 161; 48 Geo. 3, c. 55; and 52 Geo. 3, c. 93, specifying *what duties* shall be paid (save (H.), (L.), and (N.)) have been repealed, and replaced by schedules to 14 & 15 Vict. c. 36, 16 & 17 Vict. c. 90, *post*, p. 908.

## SCHEDULE (H.), DUTIES ON HORSE-DEALERS.

3. Of the  
Assessed Taxes  
themselves.

"A SCHEDULE of the Duties payable by HORSE-DEALERS."

	Aggregate Duty.
Every person who shall use or exercise the trade and business of a horse-dealer, within the cities of London and Westminster, and the liberties of the same respectively, the Parish of St. Mary-le-Bone and St. Pancras, in the county of Middlesex, the weekly bills of mortality, or the borough of Southwark, in the county of Surrey, the annual duty of	£25 0 0
In addition to the duty of 22 <i>l.</i> 10 <i>s.</i> granted by the act passed in the 48th year of the reign of his present Majesty	£2 10 0
Every person who shall use or exercise the trade and business of a horse-dealer in any other part of Great Britain, the annual duty of	12 10 0
In addition to the duty of 11 <i>l.</i> 5 <i>s.</i> granted by the said act	1 5 0

By the 59 Geo. 3, c. 13, s. 4, it is enacted, "That from and after the fifth day of April, 1819, all mares which shall be kept for the sole purpose of breeding shall, whilst so kept, be wholly exempt from duty; and that all persons shall and may sell any horses which shall have been bred by them or kept by them as farming stock upon lands in their occupation, for the space of three months at the least, without being liable to be assessed to the duties payable by horse-dealers; any thing in any act or acts to the contrary notwithstanding."

By the 43 Geo. 3, c. 161, s. 27, persons having exercised the business of a horse-dealer for the period within mentioned, are to give notice thereof and be assessed accordingly, *ante*, p. 882.

By sect. 43, horse-dealers are to enter account of horses sold in books, to be inspected by the assessors, &c., *ante*, p. 888.

By sect. 44, proper forms for such accounts are to be had at the Tax-office, *ante*, p. 888.

By sect. 48, horse-dealers, trading at different places, are to deliver returns at each, and declare where they will be charged, *ante*, p. 889.

## SCHEDULE (L.), DUTIES FOR KILLING GAME.

This schedule, and the rules for charging the duties, and all the laws relating to game and game certificates, will be found fully treated of under title "Game."

## SCHEDULE (N.), FORMS OF CERTIFICATES.

[48 Geo. 3, c. 55; and 52 Geo. 3, c. 93.]

I.—Form of CERTIFICATE to be delivered by Members of Volunteer Corps. Forms.

"I, \_\_\_\_\_, commanding officer of the \_\_\_\_\_, do hereby certify, in pursuance of an act passed in the fifty-second year of the reign of his present majesty, intitled 'An Act' [here insert the title of this act] (a), that the several persons herein named and described are severally enrolled and serving in the said corps, and have duly attended at the muster and exercise of the said corps for days, in the course of the year next preceding the date hereof; which muster rolls have been duly returned, testifying the same pursuant to the said act.

"(Signed) \_\_\_\_\_  
"Dated the \_\_\_\_\_ day of \_\_\_\_\_." "Commanding officer."

(a) "An Act for repealing the Duties of Assessed Taxes, and granting new Duties in lieu thereof, and certain additional Duties, to be consolidated therewith; and also for repealing the

Stamp Duties on Game Certificates, and granting new Duties in lieu thereof, to be placed under the Management of the Commissioners for the Affairs of Taxes."

3. *Of the  
Assessed Taxes  
themselves.*

II.—Form of CERTIFICATE to be issued to every Gamekeeper, being a Servant for whom the Master or Mistress, or the Lord or Lady of the Manor or Royalty (*if in England*), or the proprietor of lands (*if in Scotland*), shall be duly assessed to the Duty on Servants.

“No. . Game duty Certificate (A.)

[“To be used where the servant pays the duty.]

“By A. B., clerk to the commissioners acting in the execution of the acts for assessed taxes for the division of I., in the county of L.

“Received from C. D., residing in the parish [or township] of [here name the parish or township], in the said county, an assessed servant of E. F. [here name the master or mistress], of [here name the residence of the master or mistress], (in exchange for this certificate), a receipt under the hand of G. H., one of the collectors of assessed taxes for the said parish [or, township] of [here name the parish or township], for the sum of 1l. 5s. sterling, as the game duty chargeable upon the said C. D., in respect of his deputation as gamekeeper of the manor or royalty of K., in the said county [if the certificate be granted in England, or, if in Scotland, in respect of his appointment of gamekeeper of the lands of K., in the said county]. Given in pursuance of acts passed in the forty-eighth and fifty-second years of the reign of George the Third, and certified the day of , in the year of our Lord .

“(Signed) , Clerk.”

“This certificate will expire on the fifth day of April next.”

### III.

“No. . Game Duties Certificate (B.)

[To be used where the master pays the duty.]

“By A. B., clerk to the commissioners acting in the execution of the acts for assessed taxes for the division of I., in the county of L.

“Received from E. F. [here name the master or mistress], residing in the parish [or, place] of [here name the residence of the master or mistress], in the said county, on behalf of C. D., an assessed servant of the said E. F. (in exchange for this certificate), a receipt under the hand of G. H., one of the collectors of assessed taxes for the said parish [or, township] of [here name the parish or township], for the sum of 1l. 5s. sterling, as the game duty chargeable upon the said servant in respect of his deputation as gamekeeper of the manor or royalty of K., in the said county [if the certificate be granted in England, or, if in Scotland, in respect of his appointment as gamekeeper of the lands of K., in the said county]. Given in pursuance of acts passed in the forty-eighth and fifty-second years of the reign of George the Third, and certified the day of , in the year of our Lord .

“(Signed) , Clerk.”

“This certificate will expire on the fifth day of April next.”

IV.—Form of CERTIFICATE to be issued to every Gamekeeper, not being an assessed Servant to any Person or Persons.

“No. . Game Duty Certificate (C.)

“By A. B., clerk to the commissioners acting in the execution of the acts for assessed taxes for the division of I., in the county of L.

“Received from C. D., residing in the parish [or, township] of [here name the parish or township], in the said county (in exchange for this certificate), a receipt under the hand of G. H., one of the collectors of assessed taxes for the said parish [or, township] of [here name the parish or township], for the sum of 8l. 13s. 6d. sterling for the game duty chargeable upon the said C. D., in respect of his deputation as gamekeeper of the manor or royalty of K., in the said

county [if the certificate be granted in England, or, if in Scotland, in respect of his appointment of the lands of K., in the said county]; the said C. D. not being an assessed servant to any person or persons. Given in pursuance of acts passed in the forty-eighth and fifty-second years of the reign of George the Third, and certified the            day of            , in the year of our Lord            .

3. Of the Assessed Taxes themselves.

“(Signed)            , Clerk.”

“This certificate will expire on the fifth day of April next.”

V.—Form of CERTIFICATE to be issued to every Person not being a Gamekeeper.

“No.            . Game Duty Certificate (D.)

“By A. B., clerk to the commissioners acting in the execution of the acts for assessed taxes for the division of I., in the county of L.

“Received from C. D., residing in the parish [or, township] of [here name the parish or township], in the said county (in exchange for this certificate), a receipt under the hand of G. H., one of the collectors of assessed taxes for the said parish [or, township] of [here name the parish or township], for the sum of 3l. 13s. 6d. sterling, for the game duty chargeable upon the said C. D., in his own right, throughout Great Britain. Given in pursuance of acts passed in the forty-eighth and fifty-second years of the reign of George the Third, and certified the            day of            , in the year of our Lord.            .

“(Signed)            , Clerk.”

“This certificate will expire on the fifth day of April next.”

By 14 & 15 Vict. c. 36, An act to repeal the duties payable on dwelling houses according to the number of windows or lights, and to grant in lieu thereof other duties on inhabited houses according to their annual value, which recites 48 Geo. 3, c. 55, and that certain duties payable in England, Wales, and Berwick-upon-Tweed and in Scotland respectively upon dwelling houses, are assessed and levied according to the number of windows or lights therein as set forth in the schedule marked (A.) to the said act; and that it is expedient that in lieu thereof the duties on inhabited dwelling houses set forth in the schedule to this act annexed should be assessed and levied according to the annual value of such dwelling houses.

Sect. 1. It is enacted that, From and after the 5th April, 1851, in England, Wales, and the town of Berwick-upon-Tweed, and from and after the term of Whitsunday 1851 in Scotland, in lieu and instead of the said duties so payable as aforesaid, and which are hereinafter repealed, there shall be assessed, raised, levied, collected, and paid unto and for the use of her Majesty, her heirs and successors, upon inhabited dwelling houses in and throughout Great Britain, the several duties set forth in the schedule to this act annexed, payable according to the annual value of such dwelling houses, which said schedule shall be deemed and taken to be part of this act.

Duties granted on inhabited houses as specified in the schedule annexed in lieu of duties hereinafter repealed.

Sect. 2. The said duties shall be denominated and deemed to be duties of assessed taxes, and shall be under the care and management of the commissioners of inland revenue for the time being; and all powers, provisions, rules, regulations, and directions, fines, forfeitures, pains, and penalties, now in force, contained in or enacted by any act or acts relating to the duties of assessed taxes, and also all powers, provisions, rules, regulations, directions, and exemptions, fines, forfeitures, pains, and penalties, contained in or enacted by any such act or acts as aforesaid, with reference to the duties on inhabited dwelling houses according to the value thereof, as set forth in the schedule marked (B.) annexed to the said act of the forty-eighth year of King George the Third, and which were in force in regard to the said last-

Duties granted to be under care of commissioners of inland revenue.

Powers and provisions of former acts to be in force;

3. *Of the  
Assessed Taxes  
themselves.*

14 & 15 Vict. c. 86.

except as herein  
provided.

Market gardens  
and nursery  
grounds not to be  
included in valuation  
of houses.

Duties on win-  
dows and lights  
to cease.

mentioned duties at the time of the repeal of such duties by 4 & 5 Will. 4, c. 19, except as hereinafter excepted, shall severally and respectively be and become in full force and effect with respect to the duties hereby granted, and shall be severally and respectively duly observed, applied, practised, and put in execution in the respective parts of Great Britain for assessing, raising, levying, collecting, receiving, accounting for, and securing the said duties hereby granted, and otherwise in relation thereto, so far as the same are or shall be applicable, and are not repealed or superseded by and are consistent with the express provisions of this act, as fully and effectually, to all intents and purposes, as if the same powers, provisions, rules, regulations, directions, and exemptions, fines, forfeitures, pains, and penalties, were particularly repeated and re-enacted in this act with reference to the said duties hereby granted: Excepting always out of this enactment any provisions for or in relation to compositions for the said duties set forth in the said schedule marked (B.), the exemption in case 2 of Exemptions contained in the same schedule, and all the provisions of 3 & 4 Will. 4, c. 31, and of 3 & 4 Vict. c. 17.

Sect. 3. Provided always, That no market garden or nursery ground occupied by a market gardener or nurseryman *bonâ fide* for the sale of the produce thereof, in the way of his trade or business, shall be included in the valuation of any dwelling house and premises in charging the duties made payable by this act.

Sect. 4 repeals the duties granted by 48 Geo. 3, c. 55, upon dwelling houses, according to the number of windows or lights therein, as set forth in the schedule marked (A.) to the said act annexed.

The SCHEDULE referred to ;

CONTAINING

The Duties by this Act made payable upon Inhabited Dwelling Houses in and throughout Great Britain, according to the annual Value thereof ; that is to say,

For every inhabited dwelling house which, with the household and other offices, yards, and gardens therewith occupied and charged, is or shall be worth the rent of twenty pounds or upwards by the year,—

Where any such dwelling house shall be occupied by any person in trade who shall expose to sale and sell any goods, wares, or merchandise in any shop or warehouse, being part of the same dwelling house, and in the front and on the ground or basement story thereof ;

And also where any such dwelling house shall be occupied by any person who shall be duly licensed by the laws in force to sell therein by retail beer, ale, wine, or other liquors, although the room or rooms thereof in which any such liquor shall be exposed to sale, sold, drunk, or consumed shall not be such shop or warehouse as aforesaid ;

And also where any such dwelling house shall be a farmhouse occupied by a tenant or farm servant, and *bonâ fide* used for the purposes of husbandry only,

There shall be charged for every twenty shillings of such annual value of any such dwelling house, the sum of sixpence ;

And where any such dwelling house shall not be occupied and used for any such purpose and in manner aforesaid, there shall be charged for every twenty shillings of such annual value thereof, the sum of ninepence.

By 16 & 17 Vict. c. 90, An act to repeal certain duties of assessed taxes, and to grant other duties of the same description ; and to amend the laws relating to the application of the monies arising from the

redemption and purchase of the land tax, reciting that it is expedient to repeal the several duties of assessed taxes hereinafter described or mentioned, and to grant other duties of the like description in lieu thereof, enacts that—

Sect. 1. From and after the 5th April, 1854, in England, Wales, and Berwick-upon-Tweed, and from and after the 24th May in the same year in Scotland, the several duties of assessed taxes now payable in Great Britain under or by virtue of any act or acts now in force, for or in respect of male servants, carriages, horses, mules, dogs(a), hair powder, and armorial bearings or ensigns respectively, and also all the provisions, rules, and regulations relating to such duties contained in the several schedules marked respectively (C.), (D.), (E.), (F.), (G.), (I.), (K.), and (M.), annexed to 48 Geo. 3, c. 55, and the several schedules marked respectively (C.), (D.), (E.), (F.), (G.), and (M.), annexed to 52 Geo. 3, c. 93, shall respectively cease and determine, and shall be and the same are hereby repealed, save and except as to all arrears of the said duties, &c.

Sect. 2. In lieu of the duties so repealed by this act, there shall be assessed, raised, levied, and paid unto and for the use of her Majesty, her heirs and successors, in and throughout Great Britain, for or in respect of male servants, carriages, horses, mules, dogs(a), hair powder, and armorial bearings or ensigns respectively, the several duties of assessed taxes described or mentioned and set forth in the several schedules to this act annexed marked respectively (C.), (D.), (E.), (F.), (G.), (I.), and (K.), subject only to the exemptions contained in the said schedules respectively, and in the schedule marked (M.) also annexed to this act, which said several schedules, and the duties therein set forth, and the rules, regulations, and exemptions therein contained in relation to the said duties, shall be deemed and construed to be a part of this act, and as if the same were incorporated therewith under a special enactment.

Sect. 3. The duties granted by this act shall be under the direction and management of the commissioners of inland revenue, and shall be assessed, raised, levied, paid, and accounted for under the regulations and provisions of the several acts in force in relation to the duties of assessed taxes; and all powers, authorities, rules, regulations, directions, penalties, clauses, matters, and things contained in or enacted by the said acts respectively, and not expressly repealed by this act, shall, in all cases not expressly provided for by this act or the several schedules hereto annexed, and so far as the same are not superseded by and are consistent with the express provisions of this act and of the said schedules, be duly observed, applied, practised, and put in execution for assessing, raising, levying, collecting, receiving, accounting for, and securing the said duties hereby granted, and otherwise relating thereto, as fully and effectually, to all intents and purposes, as if the same powers, authorities, rules, regulations, directions, penalties, clauses, matters, and things were particularly repeated and re-enacted in the body of this act with reference to the said duties hereby granted.

Sect. 4. Provided, That no exemption from the duties granted by this act, except such exemptions as are expressly contained in and given by this act or the respective schedules hereto annexed, shall be granted or allowed; and every exemption given by this act or the said respective schedules shall be duly returned, together with a declaration of the cause thereof, by the person claiming the same, in the manner directed by the thirty-sixth section of the act passed in the forty-third year of the reign of King George the Third, chapter one hundred and sixty-one, or in default thereof such exemption shall not be allowed.

### 3. Of the Assessed Taxes themselves.

16 & 17 Vict. c. 90.

From and after 5th April, 1854, in England, &c., and 24th May, 1854, in Scotland, certain duties of assessed taxes repealed.

Duties of assessed taxes granted in lieu of duties repealed.

\* Bys. 1 of 17 Vict. c. 1, *post*, p. 916.

Duties to be under the management of commissioners of inland revenue and to be assessed under the provisions of the acts relating to assessed taxes.

No exemption, except those contained in this act, to be allowed. Exemptions to be returned and claimed as directed by 43 Geo. 3, c. 161.

(a) As to duties on dogs, see now 30 Vict. c. 5. Title "*Excise*."



3. *Of the Assessed Taxes themselves.*

16 & 17 Vict. c. 90.

The word "horse" to include mare or gelding.

Sect. 5 provides that persons keeping or using articles exempted under existing acts are not liable to be assessed under this act for the year 1854.

Sect. 6 provides that contracts of composition may be determined on notice given.

Sect. 7. In construing this act and the schedules hereto annexed respectively the term "horse" shall be construed and deemed to mean and include a mare or gelding as well as a horse.

SCHEDULES to which this Act refers.

SCHEDULE (C.)

A Schedule of the Duties payable annually for every Male Servant retained or employed in any of the several capacities herein mentioned.

	Annual Duty for each Servant.		
	£	s.	d.
For every such servant of the age of eighteen years or upwards .	1	1	0
And for every such servant under the age of eighteen years . . .	0	10	6

Rules for charging the said Duties.

1. The said duties to be paid by the master of such servant, and to extend to and be payable for every male servant retained or employed in any of the following capacities ; (that is to say,) maitre d'hotel, house steward, master of the horse, groom of the chamber, valet de chambre, butler, under butler, clerk of the kitchen, confectioner, cook, house porter, footman, running footman, coachman, groom, postilion, stable boy or helper in the stables of the master, gardener, park-keeper, gamekeeper, huntsman, whipper-in, or by whatever name or names male servants really acting in any of the said capacities shall be called, or whether such male servants shall have been retained or employed in one or more of the said capacities, and to every such servant let to hire with any carriage or horses, and shall be charged upon the greatest number of servants which the said master shall have kept at one time in the course of the preceding year in any of the capacities before mentioned; provided that where any such servant shall be let to hire with any carriage or horses for one year, or any longer period, the said duties shall be charged upon the person hiring such servant, and in any other case (except where exemption is hereinafter granted) the said duties shall be charged upon the person letting such servant to hire; provided that if the person hiring any such servant shall not make a due return thereof according to the directions of the acts in force, stating therein the name and place of abode of the persons letting such servant to hire, the person hiring such servant shall be chargeable with the said duties.

2. The said duties shall extend to every male person employed in any of the capacities aforesaid, and not being a servant to his employer, if such employer shall be chargeable to the duty by this act imposed on a servant or carriage, or for more than one horse.

3. The said duties shall extend to all servants employed as waiters to wait on guests or in any of the capacities before mentioned in taverns, coffee houses, inns, alehouses, or any other houses licensed to sell wine, ale, or other liquors by retail, and in eating or victualling houses, and in hotels or lodging houses, of whatever description, although not licensed, except occasional waiters.

4. The said duties on gardeners shall extend to every gardener who shall have contracted for the keeping of any garden or gardens wherein the constant labour of a person shall be necessary, or where a person shall have been constantly employed therein, to be paid by the person for whose use and in whose

garden such gardener or person shall have been employed; provided that no person shall be deemed to be a gardener unless the whole or the greater part of his time shall be employed as a gardener in a garden requiring the greater part of the labour of one person; provided also, that any person employing any under gardener shall be chargeable for such under gardener at the rate of 10s. 6d. only.

5. The said duties upon gamekeepers shall extend to every person retained or employed to kill or preserve game for the use of any other person, whether lawfully appointed to kill or preserve game or not, to be paid by the person retaining or employing such persons respectively for the uses aforesaid, except gamekeepers being the servants of other persons, and duly returned by and charged to the said duties as servants of such other persons: provided always, that any person employed to preserve game under a gamekeeper duly appointed shall be chargeable at the rate of 10s. 6d. only.

6. The said duties shall extend to every person who shall be employed in the capacity of a coachman, postilion, groom, or helper in the stables, although such person shall have been retained for the purposes of husbandry or any manufacture or trade, where the master of such person shall be chargeable with duty for any carriage, or for two or more horses chargeable with the duty on horses kept for the purpose of riding or drawing carriages.

#### EXEMPTIONS.

1. The said duties not to be payable by any of the royal family for any servant acting in any of the capacities aforesaid.

2. Nor by any general officer or officer of the staff in the army, or any officer serving in any regiment of horse or dragoons, or in any regiment of artillery, infantry, royal marines, royal garrison battalions, or corps of engineers, for so many male servants, being actually soldiers in the army, as are or may be allowed to them respectively by the regulations of the public service, in whatever capacity any such soldier may be employed.

3. Nor by any officer of her Majesty's navy in actual employ, for any number of servants borne upon the books of the ship to which such officer shall belong, and employed by him, in whatever capacity any such servant may be employed.

4. The said duties not to be payable for any male servant or person under the age of twenty-one years, being the son or grandson of and residing with his employer, and actually a member of his household.

5. Nor for any person retained or employed in any of the capacities enumerated in this schedule in the room of others who may be called out under any act for training and exercising a military force within the kingdom, during the time of such training and exercising.

6. Nor for one male person employed by any licensed victualler *bonâ fide* and generally to carry out beer, ale, or other liquors to customers, although he may be occasionally required to wait on guests; provided such licensed victualler shall employ only one such male person.

7. Nor for any male servant or person employed as an ostler or helper in the stables of any licensed innkeeper.

8. Nor for any male servant or person employed as groom, stable boy, or helper in the stables by the several persons hereinafter mentioned, solely and *bonâ fide* in their respective businesses; (that is to say,) by any livery stable keeper, or any horse dealer, or any person licensed to let horses for hire, or to keep and use any stage carriage or any hackney carriage; nor for any male servant or person employed by any such licensed person to drive any licensed stage carriage, or any licensed hackney carriage, or any carriage with any horse let to hire for any period less than twenty-eight days.

9. Nor for any male person employed by any stable keeper, for or in expectation of profit, solely and *bonâ fide* to take care of any horse kept for the purpose of racing or running for any plate, prize, or sum of money, or in training for any such purpose.

3. Of the  
Assessed Taxes  
themselves.

16 & 17 Vict. c. 90.

3. *Of the  
Assessed Taxes  
themselves.*

SCHEDULE (D.)

16 & 17 Vict. c. 90. A Schedule of the Duties payable annually on all Carriages of any of the Descriptions herein mentioned.

	Annual Duty for each Carriage.
For every such carriage with four wheels	
Where the same shall be drawn by two or more horses or mules	£ s. d. 3 10 0
And where the same shall be drawn by one horse or mule only	2 0 0
For every carriage with four wheels, each being of less diameter than thirty inches :	
Where the same shall be drawn by two or more ponies or mules, neither of them exceeding thirteen hands in height	1 15 0
And where the same shall be drawn by one such pony or mule only	1 0 0
For every carriage with less than four wheels :	
Where the same shall be drawn by two or more horses or mules	2 0 0
And where the same shall be drawn by one horse or mule only	0 15 0
And where the same shall be drawn by one pony or mule only not exceeding thirteen hands in height	0 10 0
And where any such carriage shall be kept and used solely for the purpose of being let for hire	One Half of above-mentioned Duties respectively.
(a) For every carriage used by any common carrier principally and <i>bona fide</i> for and in the carrying of goods, wares or merchandise whereby he shall seek a livelihood, where such carriage shall be occasionally only used in conveying passengers for hire, and in such manner that the stage carriage duty or any composition for the same shall not be payable under any licence by the commissioners of inland revenue :	
Where such last-mentioned carriage shall have four wheels	2 6 8
And where the same shall have less than four wheels	1 6 8

Rules for charging the said Duties.

1. The said duties to be respectively charged for every coach, landau, chariot, chaise, sociable, caravan, curricie, chair, or car, and for every other carriage constructed for the like purposes, by whatever name or names the same shall be called or known, and upon all such carriages hired by the year or any longer period, and upon all such carriages kept to be let out to hire.

2. The duty on carriages kept to be let out to hire to be paid by the person keeping the same for such purpose, and to be charged on the greatest number of such carriages which shall have been kept at any one time, and which shall have been actually let during the preceding year ; provided that if a due return thereof shall not be made by the hirer of any such carriage, according to the directions of the acts in force, stating therein the name and place of abode of the person letting the same to hire, such hirer shall be chargeable with the said duties.

EXEMPTIONS.

1. Any carriage belonging to her Majesty or any of the royal family.
2. Any carriage licensed by the commissioners of inland revenue to be used as a hackney carriage.

(a) See 17 Vict. c. 1, *post*, s. 3, this head of duty to be charged under Schedule F. of this act, p. 916.

3. Any carriage kept and used solely as a public stage carriage for the purpose of conveying passengers for hire under a licence in that behalf.

4. Any carriage *bonâ fide* and solely kept and used for the purpose of being let for hire, with a horse or horses to be used therewith, by any person duly licensed to let horses for hire; provided that no exemption shall be allowed for any greater number of carriages than such person shall be licensed to keep at one time for the purpose of being let for hire as aforesaid.

5. Any waggon, van, cart, or other such carriage which shall be kept truly and without fraud to be used solely in the course of trade or in the affairs of husbandry, and whereon the christian name and surname and place of abode of the owner shall be legibly painted; provided that such carriage shall not on any occasion be used for any purpose of pleasure, or otherwise than as aforesaid, except for conveying the owner thereof or his family to or from any place of divine worship.

3. *Of the Assessed Taxes themselves.*

16 & 17 Vict. c. 90.

### SCHEDULE (E.)

A Schedule of the Duties payable annually for Horses and Mules kept or used for the Purpose of riding, or of drawing any Carriage chargeable with Duty.

	Annual Duty for each Horse or Mule.
For every horse kept or used for the purpose of racing or running for any plate, prize, or sum of money, or other thing, or kept in training for any of the said last-mentioned purposes . . . . .	£ s. d. 3 17 0
For every other horse, and for every mule, exceeding respectively the height of thirteen hands of four inches to each hand, kept for the purpose of riding, or drawing any carriage chargeable with duty, except horses chargeable under schedule (F.) of this act . . . . .	1 1 0

### SCHEDULE (F.)

A Schedule of the Duties payable annually for all Horses and Mules not charged with Duty under Schedule (E.) of this Act.

	Annual Duty for each Horse or Mule.
For every horse and mule exceeding respectively the height of thirteen hands and not chargeable under schedule (E.) of this act . . . . .	£ s. d. 0 10 6
For every pony or mule, not exceeding the height of thirteen hands, kept for the purpose of riding, or drawing any carriage chargeable with duty . . . . .	0 10 6
And for every such pony or mule as last mentioned kept for any other purpose . . . . .	0 5 3

Rules for charging the said Duties contained in Schedules (E.) and (F.)

1. Any person *bonâ fide* following the occupation of a farmer, and making a livelihood principally by husbandry on any farm or farms in his occupation, shall be entitled to keep and use one horse for the purpose of riding, or of drawing any carriage chargeable with duty, and shall be chargeable for such horse with the duty of 10s. 6d. only.

2. Any rector, vicar, or curate actually doing duty in the church or chapel of which he is rector, vicar, or curate (except such person who shall occasionally perform the duty appertaining to any rector, vicar, or curate, without being the regular officiating minister of the parish or place in which such duty shall be performed); and any minister of the established church of Scotland, or of any other church or religious sect or persuasion in Scotland, being the

3. *Of the Assessed Taxes themselves.*

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regular ordained or officiating minister of a parish or quoad sacra church or chapel of ease in connection with the said established church, or of a congregational connection with any such other church or religious sect or persuasion, and not following any secular occupation whatsoever; and any priest of the Roman Catholic faith who shall have duly taken and subscribed the oaths and declarations required by law; and any minister, teacher or preacher of any separate congregation of protestant dissenters, whose place of meeting shall have been duly registered, such teacher or preacher having duly taken and subscribed the oaths and declaration required by law, and not following any secular occupation, except that of a schoolmaster; and any person practising as a physician, surgeon, or apothecary, being duly qualified so to practise, shall respectively be entitled to keep and use one horse for the purpose of riding, or drawing any carriage chargeable with duty, and shall be chargeable for such horse with the duty of 10s. 6d. only; provided such persons respectively shall not keep more than one horse.

3. Any person who shall keep one horse or mule *bonâ fide* for the use of and which shall be usually employed by any bailiff upon the concerns of any farm or farms with which such bailiff may be intrusted, or any one horse or mule *bonâ fide* for and usually employed by any shepherd or herdsman solely in tending sheep or cattle, shall be chargeable for any such horse or mule with the duty of 10s. 6d. only.

4. The duties by this act granted on horses kept for the purpose of racing or running for any plate, prize, or sum of money shall be charged either on the proprietor of such horses or on the person having the custody, care, or management of the same; provided, that such proprietor shall be chargeable only for the greatest number of such horses which he shall have kept at any one time during the preceding year; and the person having the custody, care, or management of such horses shall not be charged for any horse which he shall prove the proprietor to be assessed for.

Exemptions from the Duties contained in Schedules (E.) and (F.) (a).

1. Any horse belonging to her Majesty or any of the royal family.

(a) 2. Any person who shall keep any horse which shall be used truly and without fraud for the purpose of husbandry, or of drawing any carriage not chargeable with any duty, or of carrying burdens in the course of the trade or occupation of the person to whom such horse shall belong, for one such horse used for riding on the occasions and in manner hereinafter mentioned, (that is to say,) when returning from any place to which any load or burden shall have by such horse been drawn or carried, or in going to any place from whence any load or burden shall be to be brought back by such horse, or for the purpose of procuring medical assistance; provided such one horse shall not on any occasion be used for any other purpose, save as aforesaid.

3. Any person duly licensed to keep any stage carriage for the purpose of conveying passengers for hire at separate fares, in respect of any horses solely used in drawing any such stage carriage.

4. Any person duly licensed to let horses for hire, in respect of any horse or horses *bonâ fide* and solely kept and used by him for the purpose of being let for hire; provided that no exemption shall be allowed for any greater number of horses than such person shall be so licensed to keep at one time for the purpose of being let for hire as aforesaid.

5. Any person licensed by the commissioners of inland revenue to keep any hackney carriage, in respect of any horses solely used in drawing any such hackney carriage.

6. Any dealer in horses assessed to the duties chargeable by law on such dealers shall be exempt from the duties by this act charged for all horses belonging to such dealer, and kept *bonâ fide* for sale, and not used for any other purpose or in any other manner.

7. Any person in respect of any horses or mules kept and used solely for the purpose of husbandry, and any person who shall keep any number of horses or mules *bonâ fide* for the purpose of husbandry, some or all of which

(a) See limitation of this exemption to schedule (E.) only by 17 Vict. c. 1, s. 2, *post*, p. 916.

he may occasionally use for other purposes in drawing burdens, shall not be chargeable under schedule (F.) of this act for more than two of such horses or mules kept on any one farm, or at any one parish or place; provided that none of such horses or mules shall be used for any purpose of trade, or in drawing for hire or profit, or in drawing any carriage chargeable with duty.

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8. Any person *bond fide* following the occupation of a farmer, and making a livelihood principally by husbandry on any farm or farms in his occupation, in respect of any horses or mules kept and used for the purpose of husbandry, although such horses or mules shall be occasionally used for other purposes in drawing burdens, and although such horses or mules shall be occasionally used by such person, or let by him for the purpose of drawing for hire or profit; provided such horses or mules shall not be used for drawing any carriage chargeable with duty.

9. Any person carrying on the trade or business of a market gardener, in respect of all horses or mules *bond fide* kept and used in the cultivation of the gardens or lands in his occupation, and in conveying the produce thereof to or from market.

10. Any person in respect of any mare which shall be kept for the sole purpose of breeding.

11. Any person in respect of any pony or mule not exceeding respectively the height of thirteen hands, and used solely in any underground mine.

12. Any person for any horse which shall not at any time whatever have been used for any purpose of labour or otherwise during the year in respect of which the duty is charged.

13. Any effective officer commanding a volunteer corps claiming and returning his exemption for not more than two horses kept for her Majesty's service in such corps.

14. Any field officer, not being commandant, and any adjutant of any volunteer corps, and any person serving in any corps of yeomanry, volunteer cavalry, or providing a horse for any other person serving in any such corps, who shall be returned in the manner required by law as effective, and as having used any horse for such service on the several days of muster and exercise of such corps; provided in every such last-mentioned case a certificate shall be delivered of such effective service in the manner required by the eleventh section of an act passed in the forty-fourth year of the reign of King George the Third, chapter fifty-four.

15. Any officer belonging, attached to, and serving in any of her Majesty's forces, in respect of any horse or horses *bond fide* kept and used by him in the public service, shall be relieved from the duty thereon to such amount as would be allowed and reimbursed to such officer out of the public revenue by the rules of the service if such officer were assessed for and paid the same.

16. Any non-commissioned officer or private of the regiments of cavalry or in the artillery for any horse used in her Majesty's service.

17. Any field officer, adjutant, or surgeon of a regiment of militia who shall be returned in the manner required by law as effective, and as having used any horse for the militia on the several days when the militia was called out for training and exercise; provided in every case the exemption shall be supported by a certificate, to be delivered between the fifth day of April and the first day of May in each succeeding year to any surveyor or inspector of taxes of the district wherein such corps shall be enrolled, in the following form:

"I, \_\_\_\_\_ commanding officer of the \_\_\_\_\_ regiment of militia, do hereby certify, that the several persons herein named and described were respectively field officers, adjutant, and surgeon already commissioned and serving in the said corps as effective members thereof, and that they each kept one horse for the service of the militia, in the year ended the fifth day of April, 18 \_\_\_\_."

3. *Of the  
Assessed Taxes  
themselves.*

## SCHEDULE (I.)

16 & 17 Vict. c. 90. A Schedule of the Duties payable annually by Persons in respect of Hair Powder used or worn by them.

Annual Duty.

£ s. d.

By every person who shall have used or worn any hair powder . 1 3 6

## Rules for charging the said Duties.

1. The said rate or duty to extend to every sort or composition of powder used or worn by any person as an article of or in or about his or her dress, by whatever name the same shall be distinguished, and to be assessed upon and paid by the person having used or worn the same within the year preceding the term for which the assessment ought to be made, except as hereinafter mentioned.

2. The master of any servant who shall have declared his intention to pay the duty which may be charged or chargeable as aforesaid in respect of such servant, and shall in a list returned by him have given a true account of all the servants by him kept in respect of whom such duty shall be payable, setting forth the several capacities in which such servants are respectively kept, shall be charged for every such servant, and in such case every such servant shall be deemed to be exempted from the said duties during his continuance in the same service, and also every servant who shall come into the service of such master in the room of such servant named therein, to serve in the same capacity during the year in which the duty shall be so charged; and no servant named in such list, nor any servant serving such master in any capacity named in such list, shall during the year for which such duty shall be charged be required for himself to make any such return, or to pay the said duty, or be liable to any penalty by reason of not making any such return or not paying the said duty.

## EXEMPTION.

Any of the menial servants of her Majesty or any of the royal family.

## SCHEDULE (K.)

A Schedule of the Duties payable annually by Persons in respect of any Armorial Bearing or Ensign used or worn by them.

Annual Duty.

£ s. d.

Where such person shall be chargeable with the duty of assessed taxes for any carriage at the rate of 3*l.* 10*s.* . . . . . 2 12 9  
And where such person shall not be so chargeable . . . . . 0 13 2

## Rules for charging the said Duties.

The said duties to be paid by every person having used any armorial bearing or ensign, by whatever name the same is or shall be called, within the year preceding the term for which the assessment ought to be made, and to extend to every person who within the said period shall have been possessed of or shall have kept or had any carriage, or any seal, plate, or other article, on which carriage, seal, plate, or other article any armorial bearing or ensign shall have been during the said period painted, engraved, marked, or affixed, and whether such armorial bearing or ensign shall be registered in the college of arms or not.

## EXEMPTIONS.

Any of the royal family, or any person who shall by right of office have worn or used any of the arms or insignia worn or used by the royal family, or used in any city, borough, or town corporate.

## SCHEDULE (M.)

## No. 1.

Further Exemptions from the Duties in the several Schedules marked  
(C.) (D.) (E.) and (F.).

All persons having ordinarily resided in Ireland, and being members of either house of the parliament of the United Kingdom, whether on the part of Ireland or for any place in Great Britain, and all persons who shall hereafter be members of the said parliament as aforesaid, and who shall have ordinarily resided in Ireland previous to the commencement of the session of parliament in which they shall respectively serve in parliament, and all persons having ordinarily resided in Ireland as aforesaid who shall hereafter be ordinarily resident therein, and now holding or who shall hereafter hold offices of public employments in Ireland, and are now residing in Great Britain, or who shall hereafter reside in Great Britain, with the approbation or by the order or direction of the lord lieutenant or other chief governor or chief governors of Ireland for the time being, or of his or their chief secretary for the time being, and which shall be certified under the hand of the lord lieutenant or chief governor or chief governors, or his or their chief secretary, to be therein resident for the purposes of assisting in the execution of public business, shall be wholly discharged and exempted from the duties set forth in the schedules to this act annexed marked (C.) (D.) (E.) and (F.); provided that this exemption shall not extend to any person ordinarily resident in Ireland as aforesaid, being a member of either house of parliament of the United Kingdom, who hath resided or shall reside in Great Britain longer than during the session of parliament and forty days before and forty days after each session, nor to any article on which a duty is by this act made payable which shall be retained, kept, employed, or used by such person in Great Britain during the residence of such person in Ireland; provided also, that this exemption shall not extend to any person ordinarily resident in Ireland as aforesaid holding an office or public employment in Ireland, unless the approbation in writing or such order or direction of the said lord lieutenant or other chief governor or chief governors of Ireland for the time being, or of his or their chief secretary for the time being, and a description of the place of abode in Great Britain of the persons respectively holding such offices or employments, shall have been before the passing of this act delivered into the head office of the commissioners of inland revenue, or shall be so delivered within twenty days after the passing of this act, with respect to persons then in Great Britain, or within thirty days after the arrival in Great Britain of such persons respectively who shall thereafter arrive; provided also, that no person shall for the purposes of claiming this exemption be deemed to be ordinarily resident in Ireland unless he shall reside therein during such portion of the year as is not covered by the privilege herein provided; and for the better ascertaining the fact of such residence every person claiming the benefit of this exemption shall verify the same upon oath (if required) before the commissioners acting in the execution of this act in the district where such person shall reside.

## No. 2.

Further Exemptions from the Duties in the several Schedules marked (C.)  
(D.) and (E.).

Any sheriff of any county, or mayor or other officer in any corporation or royal burgh, serving an annual office therein, who during such year of service shall have kept or shall keep any number of servants, carriages, or horses greater than the number such person was assessed to prior to the year of such service, and who shall have been assessed for such greater number for one year, shall be exempt from further assessment for such greater number for any other year, although such year of service may have run into a second year of assessment.



3. *Of the Assessed Taxes themselves.*

17 Vict. c. 1.

Duties contained in Schedule (F.) of recited act to be deemed to have been granted and made payable thereby.

Exemption No. 2 in the said act to extend only to the duties contained in Schedule (E) in certain cases.

Horses used by common carriers occasionally conveying passengers to be charged only under Schedule (F.).

By 17 Vict. c. 1, "An act to explain and amend an act of the last session relating to the duties of assessed taxes," &c., reciting 16 & 17 Vict. c. 90, and that by reason of certain errors and omissions in the said act doubts had arisen as to the construction and meaning thereof in some particulars, and that it is expedient to remove such doubts, and to amend the said act, enacts,—

Sect. 1. The duties described or mentioned and set forth in the schedule marked (F.) to the said act annexed as duties payable annually for all horses and mules not charged with duty under Schedule (E.) of the said act shall be deemed and are hereby declared to be and to have been granted and made payable by the said act from and after the fifth day of April one thousand eight hundred and fifty-four in England and Wales and Berwick-upon-Tweed, and from and after the twenty-fourth day of May in Scotland, notwithstanding the omission to mention the said Schedule (F.) in section 2 of the said act, purporting to enumerate the several schedules containing the duties intended to be thereby granted and made payable; and the said Schedule (F.), and the duties, rules, regulations, and exemptions therein set forth or contained, shall have effect and be in force as if the said Schedule (F.) had been enumerated in the said section along with the several other schedules therein mentioned.

Sect. 2. The Exemption No. 2, under the head or title of "Exemption from the Duties contained in Schedules (E.) and (F.)," in the said act, shall be deemed and construed and is hereby declared to extend only to exempt any person from the duties contained in Schedule (E.) of the said act for one such horse as in the said Exemption No. 2 is described, used for riding on the occasions and in manner therein mentioned; and nothing in the said exemption shall be deemed or construed to extend to exempt any person from the duties contained in Schedule (F.) of the said act, for any such horse as aforesaid, except where the same shall be kept for the purpose of husbandry, and used only for such purpose, and for riding on the occasions and in manner in the said Exemption No. 2 mentioned.

Sect. 3. For any horse used by any common carrier in drawing any carriage used by him principally and *bond fide* for and in the carrying of goods, and occasionally only in conveying passengers for hire, in the manner mentioned with respect to such carriage in Schedule (D.) of the said act, there shall not by reason of such using be charged any other or higher duty than the duty contained in the said Schedule (F.)

Sect. 4. Extends the time for giving notice to determine compositions under sect. 6 of 16 & 17 Vict. c. 90.

## Telegraphs.

26 & 27 Vict. c. 112. BY "The Telegraph Act, 1863," 26 & 27 Vict. c. 112, "An act to regulate the exercise of powers under special acts for the construction and maintenance of telegraphs," it is enacted,—

### Preliminary.

Sect. 2. That this act shall apply—

- (1.) To every company to be hereafter authorised by special act of parliament to construct and maintain telegraphs;
- (2.) To every company so authorised before the passing of this act by any such special act, notwithstanding anything in any such special act contained; but so that, except as hereinafter ex-

Application of this act to all future telegraph companies, and also subject to certain exceptions, to all existing telegraph companies.

pressly provided, nothing in this act shall give to any owner, lessee, or occupier of land, or other person, or to any body, as against any such company as last aforesaid, in respect of anything lawfully done before the passing of this act by such company under any such special act, any further or other right, power, jurisdiction, authority, or remedy, than he or they would have had if this act had not been passed: Provided also, that nothing in this act shall interfere with the maintenance or repair, under any such special act, of any work lawfully constructed before the passing of this act by any such company under any such special act, or with the increasing of the number of the wires forming part of any such work; and that nothing in this act shall relieve any such company from any obligation or liability under any agreement made before the passing of this act, or shall make lawful any work constructed by the company before the passing of this act which is the subject of any proceedings at law or in equity pending at the passing of this act, or which has been constructed without such consent as was required for the construction thereof before the passing of this act.

26 & 27 Vict.  
c. 112.

Sect. 3. In this act—

The term “the company” means any company to be hereafter authorised as aforesaid (hereinafter distinguished by the term “future company”), or any company already so authorised (hereinafter distinguished by the term “existing company”):

Interpretation of  
terms.

The term “telegraph” means a wire or wires used for the purpose of telegraphic communication, with any casing, coating, tube, or pipe inclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication:

The term “post” means a post, pole, standard, stay, strut, or other above-ground contrivance for carrying, suspending, or supporting a telegraph:

The term “work” includes telegraphs and posts:

The term “street” means a public way situate within a city, town, or village, or between lands continuously built upon on either side, and repaired at the public expense, or at the expense of any turnpike or other public trust, or *ratione tenuræ*, including the footpaths of such way, and any bridge forming part thereof:

The term “public road” means a public highway for carriages, being repaired at the public expense, or at the expense of any turnpike or other public trust, or *ratione tenuræ*, and not being a street, including the footpaths of such public highway, and any bridge forming part thereof, and also any land by the side and forming part of such a public highway, but not including a railway or canal:

The term “railway” includes any station, work, or building connected with a railway:

The term “canal” includes navigation or navigable river, and any dock, basin, towing-path, wharf, work, or building connected with a canal:

The term “land” means land not being a street or public road, and not being land by the side and forming part of a public road, and includes land laid out for and proposed by the owner to be converted into a street or public road:

The term “body” includes a body of trustees or commissioners, municipal corporation, grand jury, board, vestry, company, or society, whether incorporated or not; and any provision referring to a body applies to a person, as the case may require:

The term “person” includes corporation, aggregate or sole:

The term “the board of trade” means the lords of the committee

26 & 27 Vict.  
c. 112.

of her Majesty's privy council for the time being appointed for the consideration of matters relating to trade and foreign plantations:

The term "justice" means justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises:

The term "two justices" means two or more justices met and acting together, or any one police magistrate or justice having by law authority to act alone for any purpose with the powers of two justices:

The term "sheriff" means the sheriff depute of the county or ward of a county in Scotland, and the steward depute of the stewartry in Scotland, in which the matter submitted to the cognizance of the sheriff arises, and includes the substitutes of such sheriff depute and steward depute respectively.

Recovery of  
damages, costs,  
expenses, and  
penalties.

Sect. 4. The provisions of "The Railways Clauses Consolidation Act, 1845," with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, and the provisions of "The Railways Clauses Consolidation (Scotland) Act, 1845," with respect to the recovery of damages not specially provided for, and to the determination of any other matter referred to the sheriff, or to justices, shall, so far as the same are applicable, and save so far as the same are inconsistent \* with any express provision of this act, be incorporated with this act; and terms used in those provisions shall be interpreted as the same terms are directed to be interpreted in this act. See "*Railways*."

\* *Sic*.

Provisions as to  
notices and con-  
sents.

Sect. 5. The following provisions shall apply to notices and consents under this act:—

- (1.) Every notice or consent shall be in writing or print, or partly in writing and partly in print:
- (2.) Any notice to or by the company or a body having the control of a street or public road, or of the sewerage or drainage thereunder, may be given to or by the secretary, clerk, or surveyor, or other like officer (if any) of the company or of such body, as the case may be:
- (3.) Any consent may be given on such pecuniary or other terms or conditions (being in themselves lawful), or subject to such stipulations as to the time or mode of execution of any work, or as to the removal or alteration, in any event, of any work, or as to any other thing connected with or relative to any work, as the person or body giving consent thinks fit.

#### *General Powers of Company.*

General descrip-  
tion of works  
which a telegraph  
company may  
execute, sub-  
ject to the restric-  
tions of this act.

Sect. 6. Subject to the restrictions and provisions hereinafter contained, the company may execute works as follows:—

- (1.) They may place and maintain a telegraph under any street or public road, and may alter or remove the same:
- (2.) They may place and maintain a telegraph over, along, or across any street or public road, and place and maintain posts in or upon any street or public road, and may alter or remove the same:
- (3.) They may, for the purposes aforesaid, open or break up any street or public road, and alter the position thereunder of any pipe (not being a main) for the supply of water or gas:
- (4.) They may place and maintain a telegraph and posts under, in, upon, over, along, or across any land or building, or any railway or canal, or any estuary or branch of the sea, or the shore or bed of any tidal water, and may alter or remove the same:

Provided always, that the company shall not be deemed to acquire any right other than that of user only in the soil of any street or public road under, in, upon, over, along, or across which they place any work. 26 & 27 Vict. c. 112.

Sect. 7. In the exercise of the powers given by the last foregoing section the company shall do as little damage as may be, and shall make full compensation to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount and application of such compensation to be determined in manner provided by "The Lands Clauses Consolidation Act, 1845," and "The Lands Clauses Consolidation (Scotland) Act, 1845," respectively, and any act amending those acts, for the determination of the amount and application of compensation for lands taken or injuriously affected. Provision as to compensation.

Sect. 8. In the exercise of the aforesaid powers, the company shall also be subject to the following restrictions:— Provision as to gas and water pipes.

- (1.) They shall cause as little detriment or inconvenience as circumstances admit to the body or person to or by whom any pipe for the supply of water or gas belongs or is used:
- (2.) Before they alter the position of any such pipe they shall give to the body to whom the same belongs notice of their intention to do so, specifying the time at which they will begin to do so, such notice to be given twenty-four hours at least before the commencement of the work for effecting such alteration:
- (3.) The company shall not execute such work except under the superintendence of the body to whom such pipe belongs, unless such body refuses or neglects to give such superintendence at the time specified in the notice for the commencement of the work, or discontinues the same during the work; and the company shall execute such work to the reasonable satisfaction of such body:
- (4.) The company shall pay all reasonable expenses to which such body may be put on account of such superintendence:

And the body to whom any such pipe belongs may, when and as occasion requires, alter the position of any work of the company already constructed, or to be hereafter constructed, under, in, or upon a street or public road, on the same conditions as are by the last foregoing and present sections imposed on the company in relation to such a body, *mutatis mutandis*.

#### *Restrictions as to Telegraphs under Streets and Public Roads.*

Sect. 9. The company shall not place a telegraph under any street within the limits of the district over which the authority of the metropolitan board of works extends, or of any city or municipal borough or town corporate, or of any town having a population of thirty thousand inhabitants or upwards (according to the latest census), except with the consent of the bodies having the control of the streets within such respective limits. Not to place telegraphs under streets in metropolis and large towns without consent of bodies having control of the streets.

Sect. 10. Where the company has obtained consent to the placing, or by virtue of the powers of the company under this act intends to proceed with the placing, of a telegraph under a street or public road, the depth, course, and position at and in which the same is to be placed shall be settled between the company and the following bodies: Depth, course, &c., of underground works to be agreed on between street or road authority and company, or else to be determined by justices or sheriff.

The body having the control of the street or public road:

The body having the control of the sewerage or drainage thereunder:

But if such settlement is not come to with any such body, the following provisions shall take effect:—

- (1.) The company may give to such body a notice specifying the depth, course, and position which the company desires:

26 & 27 Vict.  
c. 112.

(2.) If the body to whom such notice is given does not, within twenty-eight days after the giving of such notice, give to the company a counter-notice objecting to the proposal of the company, and specifying the depth, course, and position which such body desires, they shall be deemed to have agreed to the proposal of the company :

(3.) In the event of ultimate difference between the company and such body, the depth, course, and position shall be determined, in England or Ireland by two justices, and in Scotland by two justices or the sheriff.

Underground tubes to have distinguishing mark.

Sect. 11. Every under-ground tube or pipe of the company shall be so marked as to distinguish it from tubes or pipes of every other company.

Company not to place a telegraph along a street or road without consent of body having control of street, &c.

Sect. 12. The company shall not place a telegraph over, along, or across a street or public road, or a post in or upon a street or public road, except with the consent of the body having the control of such street or public road; and where a public road passes through or by the side of any park or pleasure grounds, and where a public road crosses, by means of a bridge or viaduct, or abuts on any ornamental water belonging to any park or pleasure grounds, and where a public road crosses or abuts on a private drive through any park or pleasure grounds, or to any mansion, the company shall not, without, or otherwise than in accordance with, the consent of the owner, lessee, and occupier of such park, pleasure grounds, or mansion, place any work above-ground on such public road.

As to where a public road passes through parks, pleasure grounds, &c.

Where landowner, &c. is liable to repair of street, &c. company not to place works in such street, &c. without consent.

Sect. 13. Where any landowner or other person is liable for the repair of any street or public road (notwithstanding that the same is dedicated to the public), the company shall not place any work under, in, upon, over, along, or across such street or public road, except with the consent of such landowner or other person, in addition to the consent of the body having the control of such street or public road, where under this act such last-mentioned consent is required: Provided, that where the company places a telegraph across or over any street or public road they shall not place it so low as to stop, hinder, or interfere with the passage, for any purpose whatsoever, along the street or public road.

Proviso.

### *Removal of Works affecting Streets and public Roads.*

Sect. 14. Provides that

(1.) If any part of the company's works is abandoned, or suffered to fall into decay ;

(2.) If the company is dissolved, or ceases for six months to carry on business, the street or road authority or owner of land may remove them.

In event of alteration of street or road, company to remove and replace the works under or over the same.

Sect. 15. In case the body having the control of any street or public road at any time hereafter resolves to alter the line or level of any portion of such street or road under, in, upon, over, along, or across which any work of the company constructed either before or after the passing of this act is placed, the company shall from time to time be bound, on receiving one month's notice of such intended alteration, and at their own expense, to remove such work, and to replace the same in such position and manner in all respects as may be required by such body, or, in the event of difference between such body and the company, in such position and manner in all respects as may be determined in England or Ireland by two justices, and in Scotland by two justices or the sheriff.

Sect. 16. Provides for the removal of dangerous posts placed before the passing of this act, and for the determination of differences in respect thereof by the board of trade.

*Restrictions as to the opening of Streets and public Roads.*26 & 27 Vict.  
c. 112.

Sect. 17. Subject to any special stipulations made with a company by the body having the control of a street or public road, and to any determinations, orders, or directions of the justices, or sheriff as aforesaid, where the company proceeds to open or break up a street or public road, the following provisions shall take effect:—

Streets and public roads to be opened only after notice and under superintendence.

- (1.) The company shall give to the bodies between whom respectively and the company the depth, course, and position of a telegraph under such street or public road are hereinbefore required to be settled or determined, notice of their intention to open or break up such street or public road, specifying the time at which they will begin to do so,—such notice to be given, in the case of an underground work, ten days at least, and in the case of an aboveground work five days at least, before the commencement of the work; except in case of emergency, in which case notice of the work proposed shall be given as soon as may be after the commencement thereof:
- (2.) The company shall not (save in case of emergency) open or break up any street or public road, except under the superintendence of the bodies to whom respectively notice is by the present section required to be given, unless such bodies respectively refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work, or discontinue the same during the work:
- (3.) The company shall pay all reasonable expenses to which such bodies respectively may be put on account of such superintendence.

Sect. 18. Subject to any such special stipulations as aforesaid, after the company has opened or broken up a street or public road they shall be under the following further obligations:—

Streets and public roads to be restored and kept in repair for six months.

- (1.) They shall, with all convenient speed, complete the work on account of which they opened or broke up the same, and fill in the ground, and make good the surface, and generally restore the street or public road to as good a condition as that in which it was before being opened or broken up, and carry away all rubbish occasioned thereby:
- (2.) They shall in the meantime cause the place where the street or public road is opened or broken up to be fenced and watched, and to be properly lighted at night:
- (3.) They shall pay all reasonable expenses of keeping the street or public road in good repair for six months after the same is restored, so far as such expenses may be increased by such opening or breaking up:

If the company fails to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the right of any person to enforce specific performance of the requirements of this act, or to any other remedy against them,) be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for each day during which any such failure continues after the first day when such penalty was adjudged; and any such penalty shall (notwithstanding anything hereinbefore, or in any act relating to municipal corporations, or to the metropolitan police force, or in any other act, contained) go and belong to the body having the control of the street or public road, and shall form part of the funds applicable by them to the maintenance of the street or public road.

Penalty.

Sect. 19. Whenever the permanent surface or soil of any street or public road is broken up or opened by the company, it shall be lawful for the body having the control of the street or road, in case they think it expedient so to do, to fill in the ground, and to make

Power to street or road authorities to execute works and charge the expenses to the company.

26 & 27 Vict.  
c. 112.

good the pavement or surface or soil so broken up or opened, and to carry away the rubbish occasioned thereby, instead of permitting such work to be done by the company; and the costs and expenses of filling in such ground, and of making good the pavement or soil so broken up or opened, shall be repaid on demand to the body having the control of the street or road by the company, and in default thereof may be recovered by the body having the control of the street or road from the company as a penalty is or may be recoverable from the Company.

Restrictions on  
impediments to  
traffic.

Sect. 20. The company shall not stop or impede traffic in any street or public road, or into or out of any street or public road, further than is necessary for the proper execution of their works. They shall not close against traffic more than one third in width of any street or public road, or of any way opening into any street or public road at one time; and in case two thirds of such street or road are not wide enough to allow two carriages to pass each other, they shall not occupy with their works at one time more than fifty yards in length of the one third thereof, except with the special consent of the body having the control thereof.

*Restrictions as to Works affecting private or Crown Property.*

As to works  
affecting crown  
property.

Sect. 21. The company shall not place any work by the side of any land or building, so as to stop, hinder, or interfere with ingress or egress for any purpose to or from the same, or place any work under, in, upon, over, along, or across any land or building, except with the previous consent in every case of the owner, lessee, and occupier of such land or building, which consent, in case of any land or building belonging to or enjoyed by the Queen's most excellent Majesty in right of her crown, may be given by the commissioners for the time being of her Majesty's woods, forests, and land revenues, or one of them, on behalf of her Majesty: Provided always, that with respect to lands and buildings situate within the limits of the district over which the authority of the metropolitan board of works extends (hereinafter referred to as the metropolis), or within the limits of any city or municipal borough or town corporate, or any town having a population of thirty thousand inhabitants or upwards, according to the latest census (hereinafter referred to as a city or large town), if the body having the control of any street in the metropolis or a city or large town, consents to the placing of works by the company in, upon, over, along, or across that street, then and in every such case that consent shall (unless it is otherwise provided by the terms thereof), be sufficient authority for the company, without any further consent, except as to any land or building belonging to or enjoyed by her Majesty in right of her crown, to place and maintain a telegraph over, along, or across any building adjoining to or near the street, and situate within the limits of the district over which the powers of the consenting body extend, or over, along, or across any land, not being laid out as building land, or not being a garden or pleasure ground, adjoining to or near the street and situate within the same limits, subject nevertheless to the following provisions:—

- (1.) Twenty-one days at least before the company proceeds to place a telegraph by virtue of the authority so conferred, they shall publish a notice stating they have obtained the consent of such body as aforesaid, and describing the intended course of such telegraph:
- (2.) Where the company by virtue of the authority so conferred places a telegraph directly over any dwelling house, they shall not place it at a less height above the roof thereof than six feet, if the owner, lessee, or occupier thereof objects to their placing it at a less height:

- (3.) If at any time the owner, lessee, or occupier of any building or land adjoining to a building, directly over which building or land the company by virtue of the authority so conferred places a telegraph, desires to raise the building to a greater height, or to extend it over such land, the company shall increase the height or otherwise alter the position of the telegraph, so that the same may not interfere with the raising or extension of the building, within fourteen days after receiving from the owner, lessee, or occupier a notice of his intention to raise or extend the building, or in case of difference between the company and the owner, lessee, or occupier as to his intention, then within fourteen days after receiving a certificate, signed by a justice of the peace, certifying that he is satisfied of the intention of the owner, lessee, or occupier to raise or extend the building :

26 & 27 Vict.  
c. 112.

- (4.) The company shall make full compensation to the owner, lessee, and occupier of any land or building over, along, or across which the company by virtue of the authority so conferred places a telegraph, and which may be shown to be in any respect prejudicially affected thereby, the amount of such compensation to be determined in manner provided by the said Lands Clauses Consolidation Acts respectively and any act amending those acts for the determination of the amount of compensation with respect to lands injuriously affected :

Provided also, that the consent of any person occupying as a tenant from year to year only shall not be required, nor shall any person so occupying be entitled to such compensation as aforesaid.

Sect. 22. Subject and without prejudice to the foregoing provisions, the company shall not place a telegraph above ground, or a post, within ten yards of a dwelling house, or place a telegraph above ground across an avenue or approach to a dwelling house, except subject and according to the following restrictions and provisions :—

Company not to place telegraphs above ground, and posts within certain distance of dwelling houses, without consent of occupier, &c.

- (1.) They shall in each such case obtain the consent of the occupier (if any) of such dwelling house, and if there is no occupier, then of the lessee entitled to possession, and if there is none, then of the owner :
- (2.) The consent of an occupier shall be effective only during the continuance of his occupation :
- (3.) On the termination of the occupation of any occupier the lessee or owner entitled to possession, if he did not consent to the placing of the telegraph or post, may give notice to the company that he requires it to be removed :
- (4.) The company shall remove the same accordingly within one month after receiving such notice :
- (5.) If any question arises between a lessee or owner and the company as to such removal, or the time or mode thereof, the same shall be referred to the determination in England or Ireland of two justices, and in Scotland of two justices or the sheriff, which justices or sheriff may give such directions as to such removal, and the time and mode thereof, as may seem reasonable, and may impose on the company for not carrying such directions into effect such penalty not exceeding five pounds a day as may seem just.

Sects. 23 to 29 inclusive provide for placing telegraphs in public places, and for the objections to doing so being settled by the board of trade.

#### *Removal or Alteration of Works affecting Land or Buildings.*

Sect. 30. Where at any time before or after the passing of this act the company has constructed any work under, in, upon, over, along, or across any land or building, or any street or public road adjoining

For building or other purposes, owner, &c., may



26 & 27 Vict.  
c. 112.

require removal  
of works.

to or near any land or building, and any owner, lessee, or occupier of such land or building, or any lord of a manor, or other person having any interest in such land or building, desires to build upon or inclose such land, or in any manner to improve or alter such land or building, or to use such land or building in some manner in which it was not actually used at the time of the construction of such work by the company, and with which the continuance of such work would interfere, then and in every such case the following provisions shall take effect:

- (1.) Such owner, lessee, occupier, lord of a manor, or other person interested may give to the company a notice specifying the nature of such intended building, inclosure, improvement, alteration, or other use of the land or building, including ingress or egress thereto or therefrom, and requiring the company to remove or alter their work so that the same may not interfere therewith:
- (2.) Within fourteen days after the receipt of such notice, or in case of difference between the company and the person giving the same as to his intention, then within fourteen days after the receipt of a certificate, signed by a justice of the peace, certifying that he is satisfied of the intention of such person to make such building, inclosure, improvement, alteration, or other use of the land or building, and that the continuance of such work would interfere therewith, the granting of such certificate being deemed to be a matter referred to the determination of the justice so certifying, the company shall remove or alter their work so that the same shall not interfere with such intended building, inclosure, improvement, alteration, or other use of the land or building:
- (3.) When such certificate is required by the company the costs thereof, when obtained, shall be paid by the company to the person giving the notice:
- (4.) Nothing herein shall empower any person to obtain the removal or alteration of any work contrary to the terms of any grant or consent in writing made or given by him, or by any person through whom he takes his estate or interest.

Sect. 31 provides for the removal of injurious works constructed before this act, and in case of dispute, under direction of the board of trade.

#### *Restrictions as to Works affecting Railways and Canals.*

For works affecting railways, canals, &c., consent of directors, &c., requisite.

Sect. 32. The company shall not place any work under, in, upon, over, along, or across any railway or canal, except with the consent of the proprietors or lessees, or of the directors or persons having the control thereof. But this provision shall not restrict the company from placing any work (subject and according to the other provisions of this act) under, in, upon, over, along, or across any street or public road, although such street or public road may cross or be crossed by a railway or canal, so that such work do not damage the railway or canal, or interfere with the use, alteration, or improvement thereof.

Sect. 33. Access from future docks to canal, and disputes respecting the same, to be determined by board of trade.

Sect. 34 provides that in any case where any matter is hereinbefore authorised or directed to be determined by the board of trade, the board of trade may appoint an arbitrator, if it be expedient, for convenience of local investigation.

#### *General Obligations and Liabilities of Company and their Servants.*

Registered office of company for service of documents.

Sect. 44. The company, before exercising any power for the construction of works or the opening or breaking up of streets or public roads in any one of the three parts of the United Kingdom, shall give

to the registrar of joint stock companies acting for that part of the United Kingdom under "The Companies Act, 1862," notice of the situation of some office where notices may be served on the company within that part of the United Kingdom; and the company shall from time to time give to such registrar notice of any change in the situation of such office: every such notice shall be recorded by the registrar, and the record thereof may be inspected from time to time by any person: the delivery at the office of which notice is so given of any notice, writ, summons, or other document addressed to the company shall, for the purposes of this act and all other purposes, be deemed good service on the company: the company shall, on giving each notice to the registrar under the present section, pay such fee as is payable under the last-mentioned act on registration of any document by that act required or authorised to be registered, other than a memorandum of association; and every person inspecting the record of such notice with the registrar shall pay such fee as is for the time being payable under the last-mentioned act for inspection of documents kept by the registrar under that act.

26 & 27 Vict.  
c. 112.

Sect. 45. If any person in the employment of the company—

Wilfully or negligently omits or delays to transmit or deliver any message;

Or by any wilful or negligent act or omission prevents or delays the transmission or delivery of any message;

Or improperly divulges to any person the purport of any message,—

Punishment of officers of company for misconduct respecting messages.

He shall for every such offence be liable to a penalty not exceeding 20*l*.

Sect 46. Nothing in this act, and nothing in any future special act, except so far as express provision to the contrary hereof may be thereby made, shall relieve the company from being subject to any restrictions, regulations, or provisions which may hereafter be made by act of parliament respecting telegraphs or telegraph companies or their charges.

Saving for effect of future general acts.

#### *Saving as to Restrictions on and Duties of existing Companies.*

Sect. 47. Nothing in this act shall affect any of the enactments specified in the schedule to this act.

Certain enactments in special acts not affected by this act.

Sect. 53. Where it appears to the board of trade that any provision of this act has not been complied with on the part of the company, and that it would be for the public advantage that compliance therewith should be enforced, the board of trade may certify accordingly to her Majesty's attorney general for England or for Ireland, or to the lord advocate for Scotland, as the case may require; and thereupon the attorney general or lord advocate may, by such civil or criminal proceeding as the case may require, enforce compliance with such provision, by the recovery of penalties, or otherwise according to law. But no such certificate shall be made by the board of trade until the expiration of twenty-one days after they have given notice to the company of their intention to make the same. This provision shall be deemed to be cumulative, and to be without prejudice to any other remedy or process against the company on the part of her Majesty or of any person or body.

Power to proceed against company given to law officers of crown on certificate of board of trade.

By 29 Vict. c. 3, "the Telegraph Act Amendment Act, 1866," this 53rd section is extended to all incorporated companies existing or future, constituted with the object, or carrying on the business, of constructing, maintaining, or working telegraphs, and to the works of those companies.

29 Vict. c. 3.

## Telegraphs.

## SCHEDULE.

[26 &amp; 27 Vict. c. 112.]

Enactments in Special Acts of existing Companies which are not to be affected by this Act.

Session and Chapter of Act.	Short Title of Act.	Enactments to which Saving extends.
16 & 17 Vict. c. clix.	The British Electric Telegraph Company's Act, 1853.	Section Forty-three (relating to Works affecting the Thames).
16 & 17 Vict. c. cciii.	The Electric Telegraph Company's Act, 1853.	Section Fifty-six (relating to Works affecting the Thames).
24 & 25 Vict. c. lxi.	The Universal Private Telegraph Company's Act, 1861.	Section Twenty-seven (relating to Works affecting the Mersey Dock Estate).
24 & 25 Vict. c. xcii.	Bonelli's Electric Telegraph Act, 1861.	Sections Twenty-five, Twenty-six, Twenty-seven (relating to Works affecting the Thames), and Thirty-eight and Thirty-nine (relating to Works affecting the Mersey, and to the Mersey and Irwell Navigation).
25 & 26 Vict. c. cxxxi.	United Kingdom Electric Telegraph Act, 1862.	Sections Fifty-three, Fifty-four, Fifty-five (relating to Works affecting the Thames), Fifty-seven, Fifty-eight (relating to Works affecting the Mersey, and to the Mersey and Irwell Navigation), Seventy-four (relating to a Sale, Transfer, or Lease), and Seventy-six (relating to Works in Scotland).

31 &amp; 32 Vict. c. 110.

By the "Telegraph Act, 1868," being an act to enable her Majesty's postmaster-general to acquire, work, and maintain electric telegraphs, the Telegraph Act, 1863, is incorporated therewith, and the term "company" therein, is also to mean the postmaster-general; and it is enacted by—

Interpretation of terms.

Sect. 3. That the terms to which meanings are assigned by the Telegraph Act, 1863, have in this act the same respective meanings, and the word "land," in the Act of 1863, shall in addition to the meaning thereby assigned to it, include any term, estate, easement, interest, right, or privilege, in, over, or affecting land, and shall include the works, tubes, wires, posts, and other property purchased or acquired by the postmaster-general.

Punishment for disclosing or intercepting messages.

Sect. 20. Any person having official duties connected with the post-office, or acting on behalf of the postmaster-general, who shall contrary to his duty, disclose or in any way make known or intercept the contents, or any part of the contents, of any telegraphic messages,

or any message intrusted to the postmaster-general for the purpose of transmission, shall in England and Ireland, be guilty of a misdemeanor, and in Scotland, of a crime and offence, and shall upon conviction be subject to imprisonment for a term not exceeding twelve calendar months; and the postmaster-general shall make regulations to carry out the intentions of this section, and to prevent the improper use by any person in his employment, or acting on his behalf, of any knowledge he may acquire of the contents of any telegraphic message.

31 & 32 Vict.  
c. 110.

Sect. 21. In every case where an offence shall be committed in respect of a telegraph message sent by or intrusted to the postmaster-general, it shall be lawful and sufficient in the indictment or criminal letters to be preferred against the offender, to lay the property of such telegraph message in her Majesty's postmaster-general, without specifying any further or other name, addition, or description whatsoever, and it shall not be necessary in the indictment or criminal letters to allege or to prove upon the trial or otherwise, that the telegraphic message was of any value; and in any indictment or in any criminal letters to be preferred against any person employed under the post-office for any offence committed under this act, it shall be lawful and sufficient to state and allege that such offender was employed under the post-office at the time of the committing of such offence, without stating further the nature or particulars of his employment.

Property in telegraphic messages to be laid in postmaster general.

Sect. 22. All land, property, and undertakings purchased or acquired by the postmaster-general under this act shall be assessable and rateable in respect to local, municipal, and parochial rates, assessments, and charges, at sums not exceeding the rateable value at which such land, property, and undertakings were properly assessed or assessable at the time of such purchase or acquisition.

Postmaster-general to pay rates, &c.

## Thames.

AS to rivers in general, see "*Rivers and Navigation.*"

Some of the regulations of the navigation on the river Thames are not of general interest, with regard to which it is enough here to mention the acts which relate to them, viz. :—

[9 Anne, c. 26; 24 Geo. 2, c. 8; 2 Geo. 3, c. 28; 11 Geo. 3, c. 45; 16 Geo. 3, c. 43; 17 Geo. 3, c. 18; 39 & 40 Geo. 3, c. 87; 43 Geo. 3, c. 115; 47 Geo. 3, sess. 1, c. 37; 3 Will. 4, c. 19.]

[Herein of 2 & 3 Vict. c. 71; 20 & 21 Vict. c. cxlvii.; 22 & 23 Vict. c. cxxxiii.; 27 & 28 Vict. c. 113; 29 & 30 Vict. c. 89.]

The more important acts are set out in particular.

The subject is here placed under the heads :—

1st. *Of the Navigation.* (22 & 23 Vict. c. cxxxiii.) p. 928.

2nd. *Of the Conservancy of the River.* (2 & 3 Vict. c. 71; 20 & 21 Vict. c. cxlvii.; 27 & 28 Vict. c. 113; 29 & 30 Vict. c. 89.) p. 939.

The 7 & 8 Geo. 4, c. lxxv. recites and repeals 6 Hen. 8, 2 & 3 P. & M., 1 Jac. 1, 11 & 12 Will. 3, 4 Anne, 2 Geo. 2, 4 Geo. 2, 10 Geo. 2, 34 Geo. 3, and so much of 29 Car. 2, c. 7, as prevents travelling by water on Sunday.

The 7 & 8 Geo. 4, c. lxxv. was repealed by 22 & 23 Vict. c. cxxxiii., which provides that such repeal shall not affect the *existence* of the watermen's company or its property, whether real or personal, or any of its rights and obligations as a body corporate, except as altered by that act,

1. *The Navigation of the River.*

22 & 23 Vict. c. cxxxiii.

Company incorporated (a).

Of whom the company is to consist.

And enacts, by section 4, that the company of watermen, wherry-men, and lightermen shall be one body corporate, by the name and style of "The master, wardens, and commonalty of watermen and lightermen of the river Thames," and by that name shall have perpetual succession and a common seal, and shall and may sue and be sued.

Sect. 5. The said company shall consist of the watermen, wherry-men, and lightermen, whose names have been registered by the overseers and rulers of the said company, in pursuance of the said recited acts, or some of them, previously to the passing of this act, and who shall be called freemen of the said company, and of such other persons as shall be admitted freemen of the said company as hereinafter is mentioned.

## I. The Navigation of the River.

22 & 23 Vict. c. cxxxiii.

By "The Watermen's and Lightermen's Amendment Act, 1859," (the 22 & 23 Vict. c. cxxxiii), intituled "An act for the better regulation of watermen, barge owners, and others connected with the navigation of the river Thames between Teddington Lock and Lower Hope Point," reciting that it is expedient that the limits of the 7 & 8 Geo. 4, c. lxxv., should be altered, and that the exclusive privileges thereunder should be modified, and that proper regulations should be made for the navigation of barges, lighters, boats, and other like craft carrying goods, wares, and merchandise within the limits of this act, and for the regulation of the persons employed to navigate the same, and for the security of passengers passing to and fro on the said river in boats and other craft, and for the orderly conduct of the traffic on the said river, it is enacted—

Definition of passenger boat.

Sect. 2. The term "passenger boat," as used throughout this act, shall mean any sailing boat, river steam boat, row boat, wherry, or other like craft, used for carrying passengers within the limits of this act, unless there is something in the context inconsistent with such a meaning.

Definition of the term lighterman and waterman, &c.

Sect. 3. The term "lighterman" shall mean any person working or navigating for hire a lighter, barge, boat, or other like craft within the limits of this act; the term "the company" shall mean the master, wardens, and the commonalty of watermen and lightermen of the river Thames; the term "the court" shall mean the court of master, wardens, and assistants of the same company; and the term "waterman" shall mean any person navigating, rowing, or working for hire "a passenger boat," unless there is something in the context inconsistent with such meanings.

Limits of the act.

Sect. 8. This act shall extend to all parts of the river Thames from and opposite to and including Teddington Lock in the counties of Middlesex and Surrey, to and opposite to and including Lower Hope Point near Gravesend, in the county of Kent, and to all docks, canals, creeks, and harbours of or out of the said river, so far as the tide flows therein.

Affairs to be managed by court of master, wardens, and assistants.

Sect. 11. The affairs of the said company shall continue to be managed by the court of master, wardens, and assistants, and the present members of the said court shall continue members of the same during their respective lives, unless they resign or are removed in manner hereinafter mentioned.

Appointment of master and wardens.

Sect. 12. One of the members of the said court shall continue to be styled the master of the said company, and shall continue in office

(a) See the *Conservators of River Tone v. Ash and others* (10 B. & C. 349); *Company of Proprietors of*

*Bridgewater and Taunton Canal Navigation v. Bluet* (Id. 393), as to what will constitute a corporation, &c.

until another master has been appointed in manner hereinafter mentioned, unless he sooner dies, resigns, or ceases to be a member of the said court; and four other members of the said court shall continue to be called wardens of the said company, one of whom shall be called the senior warden, and the remaining three shall be called the junior wardens, and the said four wardens respectively shall continue in their respective offices until other wardens have been appointed, unless they sooner resign, die, or cease to be members of the said court.

Sect. 29. The said court of master, wardens, and assistants shall, in their discretion, appoint any number of watermen to ply and work on Sundays on the river Thames, between Chelsea and Bow Creek, at such common stairs or places of plying as the court thinks fit, so as not to interfere with any established private ferry, and may pay such sums of money as may be agreed upon to such watermen by way of compensation for their services.

1. *The Navigation of the River.*

22 & 23 Vict. c. cxxxiii.

Court may appoint Sunday watermen.

Sect. 30. No sum exceeding twopence shall be taken by any waterman authorised in pursuance of this act to ply on Sundays for carrying any person across the river, or to or from any ship or vessel; and if any waterman so plying on Sunday takes from any person more than the said sum of twopence, he shall, for each offence, incur a penalty not exceeding 5*l*.

Fares of Sunday watermen.

Penalty.

Sect. 31. All sums received by any waterman so appointed to ply on Sunday shall, on the Monday following, or such other day as the court may appoint, be paid by him to the clerk of the said company, or to such other person as the court may appoint; and the surplus of such sums, after deducting the sums paid by the company to the waterman for his services, or the rent received for such ferries, if let as herein-after provided, shall be applied by the company to the use of the poor, aged, decayed, and maimed watermen and lightermen of the said company, and their widows, at the discretion of the said court of master, wardens, and assistants.

Receipts on Sunday to be paid to company.

Sect. 32. If any waterman so appointed to ply on Sunday as aforesaid makes default in paying over in manner aforesaid all sums received by him in respect of Sunday fares, he shall for each default or short payment incur a penalty not exceeding 40*s*.

Penalty on not paying over receipts.

Sect. 33. Nothing herein contained shall empower the said court of master, wardens, and assistants to appoint any Sunday ferries, or grant any licences to any waterman or others to ply on the river Thames on a Sunday, from or at the stairs on either side of the bridge at Vauxhall, or at any stairs or other place within two hundred yards of any part of the said bridge, so as to interfere with, prejudice, or affect the tolls authorised to be taken for crossing the same.

Sunday ferries not to be appointed within 200 yards of Vauxhall Bridge.

Sect. 34. It shall be lawful for the said court of master, wardens, and assistants, to let to farm to any person or persons the said plying or working on Sundays at any common stairs or places of plying for carrying and recarrying of passengers across the said river, or to or from any ship or vessel, for such time as they shall think proper, provided they give or cause to be given fourteen days previous notice thereof, by ordering a printed paper, expressing their intention to let the same, to be affixed in some conspicuous place at or near such respective common stairs or places of plying, and let the same accordingly to the highest bidder or bidders who shall give security, to their satisfaction, for payment of the rent; and if any waterman whom the said court shall appoint to ply and work as aforesaid, or any person or persons who shall take such plying and working to farm, or any person or persons employed by or under him, shall demand or take from any person or persons whom he or they shall carry, any greater sum of money than twopence as aforesaid, he or they shall forfeit and pay for every such offence any sum not exceeding 5*l*.

The company may let the Sunday ferries to farm.

Penalties.

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Persons farming the same to employ no person who has not been approved of by the court.

Penalty.  
Saving right of watermen of St. Margaret's and of St. John's, Westminster.

Power to justices at Gravesend to license watermen to work on Sundays.

Application of fares received at Gravesend on Sundays.

Permission may be granted to other watermen to work on Sundays for persons making request.

Sect. 35. If any person or persons appointed to ply and work, or taking such plying or working to farm, as aforesaid, shall employ or wilfully permit or suffer any other person or persons to be employed in plying or working as aforesaid, until such last-mentioned person or persons, and the boat or boats to be used by him or them, shall have been approved of for that purpose by the said court of master, wardens, and assistants, he or they shall for every such offence forfeit and pay a sum not exceeding 5*l*.

Sect. 36. Nothing in this act contained shall extend to hinder or prevent the watermen of the parishes of Saint Margaret and Saint John, Westminster, from plying or working for hire across the river Thames, from Westminster Bridge to Stangate, and from the Horse Ferry to Lambeth Stairs respectively, on every Sunday, and taking the fare of one penny for each passenger, in their several turns, as they have been accustomed and used to do; and the money earned by them or any of them on that day is hereby directed to be from time to time employed for the use of the poor, aged, decayed, and maimed watermen, and their widows, of the said parishes of Saint Margaret and Saint John, Westminster; and any two justices of the peace of the said parishes are hereby authorised from time to time to call the watermen so working to account for the moneys by them earned on the Sunday as aforesaid, and cause the same to be applied and disposed of as aforesaid; and that the said watermen of the said parishes of Saint Margaret and Saint John for the time being shall choose two stewards and a clerk on the twenty-third day of April in every year yearly, unless such day shall happen to be on the Lord's day, and in such case on the following day; and such watermen of the said parishes, or the major part of them which shall be present at a meeting of their society, shall and have hereby power to appoint such of the watermen of the said parishes as shall, in their respective turns, work on the Sunday as aforesaid; and no freeman or apprentice, except the watermen of the said parishes, shall ply or work across the said river at either of the said places on a Sunday.

Sect. 37. The justices of the peace acting in and for the corporation, villages, and parishes of Gravesend and Milton, or any of them, may grant licences to any number of freemen of the said company residing at Gravesend, or any of the apprentices of such freemen or of the widows of such freemen residing at Gravesend, to carry goods and passengers for hire at and from Gravesend on Sundays, and such licence shall continue in force for the time therein expressed: nevertheless, the said justices or any of them may from time to time recall such licences before the expiration of the time therein respectively expressed.

Sect. 38. The fares taken on Sundays by freemen and apprentices licensed to work at Gravesend as aforesaid shall be paid by them to such persons as the said court of master, wardens, and assistants of the said company from time to time appoint for that purpose; and out of the said moneys, such sum as the said court shall from time to time fix, shall be paid to each freeman or apprentice for his day's labour, and the surplus thereof shall be distributed, twice in every year, to or for the benefit of the freemen of the said company residing at Gravesend, and the widows of freemen at the same place, under such regulations and in such manner as the said court of master, wardens, and assistants may determine.

Sect. 39. If any person requests the said justices acting in and for the corporation, villages, and parishes of Gravesend and Milton, or any of them, to grant permission to any freeman of the company, or any apprentice of such freeman or the widow of such freeman, to work for him, her, or them on a Sunday, the said justices may grant such permission to such freeman to work for the person making such request, and such freeman or apprentice may retain the fares received

by him in respect thereof for his own benefit or the benefit of his master or mistress.

Sect. 40. If any freeman or apprentice, or other person, except he be appointed by the said court as aforesaid, plies for hire, or takes or carries for hire on a Sunday, at or from any common stairs or place of plying on either side of the said river at which the said court appoints watermen to ply and work as aforesaid, any fare or passenger across the said river, or to either of the two common stairs or places of plying on the opposite side of the said river, next above or next below the stairs or place at which such appointed or licensed waterman plies, or to any place or places to which the fares and passengers taken at such several and respective common stairs and places of plying are usually conveyed by the watermen appointed by the said court to ply and work, or to or from any ship or craft lying or being on the said river, within the distance of such two other stairs or places of plying, he shall incur for each offence a penalty not exceeding 40s.

Sect. 41. If any freeman of the company, or apprentice, or other person (without having such licence or permission as aforesaid from the said justices,) plies or works at Gravesend on any Sunday, he shall for every such offence incur a penalty not exceeding 5*l*.

Sect. 42. The said court of master, wardens, and assistants shall have full power to superintend, regulate, and control all the affairs and concerns of the said company, and to order and to dispose of the custody of their common seal, and the use and application thereof.

Sect. 43. The owner for the time being of any lighter or lighters, barge or barges, or other boat or craft used or to be used within the limits of this act, for the carrying of goods, wares, or merchandise, without passengers, from or to any place, ships, or other vessels, shall cause his name and place of abode to be registered in a book to be kept by the company for that purpose, and shall deliver to the clerk of the said company a statutory declaration of the ownership of every lighter, barge, boat, or other craft which shall be so registered; and thereupon the said company shall deliver to the said owner a certificate of such registration to be renewed annually; and if any such owner shall use or employ, or cause to be used and employed for the purpose of carrying goods for hire, any such lighter or lighters, barge or barges, or other boat or craft, without having first so registered his name and place of abode and obtained such certificate, he shall forfeit and pay for every such offence the sum of 10*l*.; and there shall be paid to the said company for the original registry of the name and abode of such owner, if a freeman, the sum of 10*s*., if a non-freeman, the sum of 1*l*., and for the registry of any change in the place of abode of such owner, whether a freeman or the widow of a freeman or non-freeman, the sum of 5*s*., and for each annual renewal of the said certificate such sum as the said court shall from time to time determine, not exceeding 5*s*.

Sect. 44. The owner of any such lighter, barge, boat, or other craft, as lastly hereinbefore mentioned shall cause its name to be registered in a book to be kept by the company, and there shall be paid to the said company for the original registry of any such lighter, barge, or other boat or craft, and also for the registry of any change in the ownership thereof, the sum of one shilling, and the clerk shall, upon the original registry of any such craft, or upon the registry of any change of ownership in any such craft, issue a distinctive number to the owner of such lighter, barge, or other boat or craft, and such number shall be the same for all lighters, barges, boats, or craft registered by the company in the name of such owner.

Sect. 45. The owner or owners of any such lighter, barge, or other boat or craft shall cause the number so issued to them, together with

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Watermen not to ply or work on Sunday below London bridge, at the plying places next above and below any Sunday ferry.

Penalty.

Penalty on other watermen working at Gravesend on Sunday.

Court empowered to regulate the affairs of the company.

The names of persons keeping boats, &c. for carrying goods without passengers, to be registered in the books of the company.

Penalty.

Register of names of lighters, &c. Payment for registry.

The names and numbers of such



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boats to be painted thereon.

Penalty.

Freemen qualified to take apprentices.

Barge owners qualified to take apprentices.

No freeman, freeman's widow, or barge owner to take any apprentice under fourteen or above twenty years of age.

Penalty for refusing to lodge apprentices.

Apprentices to be compelled to serve, although of age.

Court for binding apprentices to freemen.

the name or names of such owner or owners, and with the name or names of every lighter, barge, or other boat or craft, to be painted white on a black ground, in capital letters and figures, of such size as may from time to time be determined by any byelaw for the time being in force; such figures and letters to be painted on the hudds boards of barges, and on the bows of lighters and other craft, and to be preserved and kept legible, so as to be plainly seen in the daytime by persons passing on the said river; and no person or persons shall have two lighters, barges, or other boats or craft of the same name; and if any such lighter, barge, or other craft is worked or navigated without being registered, or without the number and names being painted and kept legible as aforesaid, the owner thereof, or the person in charge thereof, shall for every such offence incur a penalty not exceeding 5*l*.

Sect. 46. Every freeman of the said company, or widow of a freeman, may take such apprentices as he or she thinks fit, for the purpose of having them instructed in the navigation of barges, lighters, boats, vessels, and other like craft, subject to the following conditions, that no apprentice shall be bound for a less period than five years, and that the person to whom such apprentice is bound shall undertake to find him proper board and lodging, either on his own premises or elsewhere.

Sect. 47. Every registered owner of a barge, lighter, or other like craft, having in his employ a freeman of the said company, or a lighterman licensed as hereinafter mentioned, and actually employed in navigating the barge, lighter, or other like craft of his employer, may take such apprentices as he thinks fit, for the purpose of having them instructed in the navigation of barges, lighters, and other like craft, subject to the following conditions, that no apprentice shall be bound for a less period than five years, and that the person to whom such apprentice is bound shall undertake to find him proper board and lodging, either on his own premises or elsewhere.

Sect. 48. That after the commencement of this act it shall not be lawful for any freeman of the said company, or widow of a freeman, or registered barge owner, to bind or take any person as an apprentice who shall be under the age of fourteen or above the age of twenty years; and no indentures of apprenticeship shall be executed unless it appear by a certificate signed by the registrar of births for the district or place where the person to be bound was or shall be born or baptised, or by the oath (or affirmation, if of the people called Quakers) of a credible witness, that such person is of the age of fourteen years and under the age of twenty years.

Sect. 49. And if any such freeman or widow or barge owner, who shall bind any such apprentice, shall neglect or refuse to lodge his apprentice as aforesaid, he or she shall for every such offence forfeit and pay any sum not exceeding ten pounds, to be recovered by the said company; and the apprentice or apprentices of such person shall and may, upon application made to the court of master, wardens, and assistants of the said company at any of their meetings, be by them turned over to any other master or mistress, any indenture, covenant, contract, or agreement to the contrary notwithstanding.

Sect. 50. Every person duly bound apprentice to any freeman of the said company, or the widow of any freeman, or to a barge owner, shall serve and be compellable to serve the whole of his apprenticeship, although he may previously have attained the age of twenty-one years, any law or statute to the contrary notwithstanding.

Sect. 51. That at the court to be holden next after the twenty-fourth day of June in every year, five of the members of the said court, not being the master or wardens, preference being given to such of them (if any) as shall have served the office of master, shall be appointed, who, together with the master and wardens for the time being of the

said company, and such other of the assistants as shall think proper from time to time to attend, shall be a court for the admission of freemen of the said company, and the execution of all indentures of apprenticeship authorised by this act, and assignment of apprentices; and such court shall meet from time to time during the year for which they shall be appointed, when they shall think proper, but no business shall be transacted at any such meeting unless five persons be present, and the same person shall preside, and all questions shall be determined at the said court in the same manner as is hereinbefore provided with respect to the meetings of the court of master, wardens, and assistants of the said company; and that no indenture of apprenticeship, or the assignment of any apprentice from one master to another, authorised by this act, or the admission of any person to be a freeman of the said company, shall be executed or made except at a meeting of the said court.

Sect. 52. That after this act shall come into operation, it shall be lawful for all apprentices bound to a party authorised by this act to take apprentices, to have or take the sole charge of any boat, barge, or other vessel, provided such apprentices shall have worked and rowed upon the said river as apprentices for the space of two years at the least, and upon their being found qualified to act, upon examination by the said court, and upon obtaining a licence from the said court, subject to an appeal to the conservators of the river Thames, as is hereinafter provided with respect to licensed lightermen; and the master or mistress of every such apprentice not having worked or rowed as aforesaid, who shall permit or allow such apprentice to take such sole charge of any such boat or other vessel, shall forfeit and pay for every such offence any sum not exceeding 5*l*.

Sect. 53. That if the clerk of the said company shall refuse or neglect to register the name and place of abode or work of any freeman or widow of a freeman, or the number of any wherry, boat, or other vessel, or the name and place of abode of any person who may keep any lighter, barge, or other boat or craft, and the name and number thereof, or other matter or thing required by this act to be registered by him, on being applied to and required so to do, he shall for every such offence forfeit and pay any sum not exceeding 5*l*.

Sect. 54. If any person, not being a freeman licensed in pursuance of this act, or an apprentice, qualified according to this act, to a freeman or to the widow of a freeman of the said company (except as hereinafter is mentioned), shall at any time act as a waterman or lighterman, or ply or work or navigate any wherry, passenger boat, lighter, vessel, or other craft upon the said river, from or to any place or places or ship or vessel within the limits of this act, for hire or gain (except as hereinafter is mentioned), every such person shall forfeit and pay for every such offence any sum not exceeding 40*s*. : Provided always, that it shall be lawful for any person who shall obtain a licence as is herein provided, or is an apprentice qualified as herein provided, to work as a lighterman within the limits of this act.

Sect. 55. Any person qualified as hereinafter mentioned, if desirous of working as a lighterman within the limits of this act, may apply to the said court of master, wardens, and assistants for a lighterman's licence authorising him to work as a lighterman within the limits of this act; and if any person qualified as hereinafter mentioned, is desirous of working as a waterman within the limits of this act, he may apply to the said court of master, wardens, and assistants for a waterman's licence authorising him to work as a waterman within the limits of this act; and the court, if satisfied of the competency of such applicant, shall grant to him a lighterman's or waterman's licence accordingly.

Sect. 56. No barge, lighter, boat, or other like craft for the carrying

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No apprentice to have the sole charge of any boat unless he shall have served two years.

Penalty.

Penalty on clerk of company for neglecting to register.

None but freemen of the company (except as after mentioned) to row or work any boat or craft for hire.

Penalty.

Applications for lighterman's and waterman's licences.

No barge, &c. to

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22 & 23 Vict. c. cxxxiii.

be navigated unless a lighter-man, &c. shall be in charge.

Penalty.

Penalty on unlicensed person navigating passenger boat.

No boat to be used for carrying passengers, without a licence expressing the number of persons it may be allowed to carry.

Number and name of owner to be painted thereon.

Penalty.

Registry of licences.

Penalty for taking more than the number allowed on licence.

Court to fix fares for the watermen.

of goods, wares, or merchandise shall be worked or navigated within the limits of this act, unless there be in charge of such craft a lighter-man licensed in manner hereinbefore mentioned, or an apprentice, qualified as hereinbefore mentioned; and if any such craft be navigated in contravention of this section, the owner thereof shall in respect of such offence incur a penalty not exceeding 5*l.*, subject to this proviso, that no such penalty shall be payable if the owner proves, to the satisfaction of the magistrate or court before whom the case is heard, that he is unable, for the usual compensation, to obtain the services of any such lighter-man or apprentice.

Sect. 67. If after the commencement of this act any unlicensed person rows, steers, or navigates for hire, within the limits of this act, any passenger boat, he shall incur for each offence a penalty not exceeding 5*l.*

Sect. 68. That the said court shall grant a licence to any freeman of the said company, or the widow of any freeman, to use and work for hire, any wherry, boat, or other vessel, except river steam boats, for carrying persons or passengers on the said river Thames within the limits of this act, on a certificate being produced to them, verified by the oath of the builder or builders or owner or owners of such wherry, boat, or other vessel, of the burthen, size, and dimensions thereof, according to the byelaws for the time being of the company; and in such licence there shall be expressed the number of persons or passengers such wherry, boat, or other vessel respectively shall be permitted to take and carry, and for every such licence one shilling and no more shall be paid; and such licence shall contain a number for such wherry, boat, or other vessel, which shall be registered in a book or books to be kept for that purpose by the clerk of the said company; and the owner or owners of such wherry, boat, or other vessel shall cause such number, together with his, her, or their own name or names, to be painted and kept legible on such wherry, boat, or other vessel, in such manner as in any byelaws or regulations now in force or which may hereafter be made by the said court shall from time to time be directed; and no wherry, boat, or other vessel belonging to any freeman of the said company, or the widow of any freeman, shall at any time hereafter be allowed to ply for hire at any public stairs or plying places for the carrying of persons or passengers for hire within the limits of this act without such licence as aforesaid, and without the name and number being painted thereon as aforesaid, and if any wherry, boat, or other vessel shall be used or worked without such licence for the same having been first obtained as aforesaid, or without such name or names and number painted and legible thereon as aforesaid, the owner or owners thereof or the person rowing or navigating the same shall forfeit and pay for every such offence any sum not exceeding 5*l.*

Sect. 69. All licences granted by the said court of master, wardens, and assistants shall be registered by them.

Sect. 70. If a greater number of passengers is taken in any passenger boat than she is licensed to carry, or, if not licensed, than she is calculated to carry, having reference to the burthen and construction thereof, the owner or person having charge thereof shall, whether such boat shall be licensed to carry passengers or not, incur for the first offence, in respect of every passenger exceeding such number, a penalty not exceeding 40*s.*, and in respect of any subsequent offence shall incur the same penalty, and be liable to have his licence suspended, withheld, or withdrawn for such time as the said court of master, wardens, and assistants may think just.

Sect. 71. The said court of master, wardens, and assistants are hereby empowered, with the sanction of the conservators of the river Thames, from time to time to limit and fix the price or fare that every waterman is entitled to be paid for his labour in conveying any person

or persons in a passenger boat from place to place, or to and from steamers or other vessels on the said river, within the limits of this act, and with the like sanction, from time to time to alter such prices or fares, or any of them: Provided always, that this provision shall not enable the said court of master, wardens, and assistants to interfere in any way with the Sunday ferries hereby authorised, or the tolls thereof.

Sect. 72. The said court of master, wardens, and assistants shall cause a list of the fares fixed and allowed from time to time as aforesaid, together with such of the provisions contained in this act, and of the byelaws for the time being in force relating to the conduct of watermen plying for hire, as the said court think proper, to be printed on a card, or otherwise, as the court think fit, and shall cause a copy thereof to be given *gratis* to all licensed watermen, and shall furnish copies thereof to every waterman upon payment of the sum of one shilling for a dozen copies, and so in proportion for a less number; and every waterman shall have a copy thereof in his boat; and if any waterman refuses to produce the same to any person by whom a fare may be payable, or produces a false copy thereof, or does not permit such person to examine the same, then and in any such case every such person is hereby discharged from paying his fare, and the waterman so offending shall for each offence incur a penalty not exceeding 40s.

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Watermen to carry a list of fares and bye-laws.

Penalty.

Sect. 73. If any waterman plying within the limits of this act wilfully avoids or attempts to avoid any passenger coming to or being at any stairs or plying place for the purpose of taking a boat, or refuses or omits to take such passenger inquiring for or desirous of taking such boat, or represents that he is hired when he is not so hired, or does not answer when called by the number of his boat, then and in any such case every such waterman so offending shall incur for every offence a penalty not exceeding 40s.

Penalty on waterman avoiding or refusing to take a fare.

Sect. 74. If any waterman refuses to take any passenger to such place or places as he directs, or unnecessarily delays any passenger by not bringing up his boat for the passenger to get into, or continues at the stairs or causeway after such passenger is in his boat, or does not proceed with due diligence and exertion, and without wilful let or hindrance, to such place or places as the said passenger lawfully directs, then and in every such case every waterman shall for every offence incur a penalty not exceeding 40s.

Penalty on waterman refusing or delaying to proceed as directed.

Sect. 75. Every person who demands or takes for his or their labour or fare in navigating any passenger boat within the limits of this act, more than the said prices so fixed by the said court of master, wardens, and assistants, and allowed as aforesaid, shall incur for each offence a penalty not exceeding 40s.

Penalty on demanding more than the fare.

Sect. 76. If any waterman refuses to permit any person to read, or in anywise hinders any person from reading the name and number painted on any boat as aforesaid, or if any waterman refuses to tell his christian name or surname, or the number of his boat, to any person who demands the same, on being paid any fare, or in answer to such demand gives a false name or number, or makes use of any scurrilous or abusive language to any passenger or person, then and in every such case every such waterman shall incur for every such offence a penalty not exceeding 40s.

Penalty on waterman preventing persons reading the names or numbers, or refusing to state their names, or using abusive language.

Sect. 77. That the said court shall, upon the request in writing, addressed to the clerk of the said company and left at the hall of the said company or the office of such clerk, of every person or persons who now keep or shall hereafter keep on the said river, within the limits of this act, any wherry or other boat to be let out for hire or gain, cause the name or names and place or places of abode of such person or persons to be duly registered in a book or books to be kept by the clerk of the said company for that purpose, to whom every such

Boats let for hire to be registered and numbered.

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22 & 23 Vict. c.  
cxxxiii.

Penalty.

Lord mayor, &c.  
to summon persons  
refusing to pay  
their fare, and  
order payment,  
&c.

person shall pay, for the use of the said company, two shillings and sixpence for each wherry or boat for every such registry; and also cause a number for each wherry or boat to be forthwith delivered by the said clerk to such person or persons, and such number shall be painted in capital figures, in such way as the court may direct, on such wherry or other boat, and be preserved and kept legible, so as to be plainly seen in the day-time by persons passing on the said river; and if any such person or persons shall neglect to cause such wherry or boat to be registered, or such number, together with his name and the name of the said boat, to be painted or preserved legible, they, he, or she shall for every such offence forfeit and pay any sum of money not exceeding 40s.

Sect. 78. If any person refuses to pay any waterman the fare justly due to him for carrying such person in his boat, the lord mayor or other magistrate of the city of London, or any justice of the peace, police or stipendiary magistrate, within whose jurisdiction such refusal is made, shall, upon complaint made of such refusal, summon such person or persons to answer the said complaint, by causing such summons to be served personally, or by leaving the same at his, her, or their last or usual place of abode or business; and if any person or persons, being duly summoned as aforesaid, refuses or neglects to appear and answer to any complaint or complaints made against him for refusing any such payment as last hereinbefore is mentioned, the lord mayor or other magistrate of the city of London, or justice, police or stipendiary magistrate, shall issue his warrant for apprehending such person, upon oath being made of such his refusal as aforesaid and service of such summons, and cause the party so offending to be brought before him; and the said lord mayor or other magistrate of the city of London, or justice, police or stipendiary magistrate respectively, the party accused being before him, either by means of such summons or of such warrant as last hereinbefore is mentioned, shall, upon due proof made of such refusal of payment, upon oath or upon confession of the party or parties, order payment of the sum due to any such waterman, and also award reasonable satisfaction to be made to him for his loss of time and costs; and if the said person so offending does not pay such sum or sums of money, and make such reasonable satisfaction (if awarded) as aforesaid, the said lord mayor or other magistrate of the city of London, or justice, police or stipendiary magistrate respectively, shall commit the person or persons so refusing to some prison within the city of London or the several counties or places adjoining to the said river of Thames, there to remain for any space of time not exceeding one calendar month, unless the sum or sums of money ordered and awarded as aforesaid be sooner paid.

Persons refusing  
to give their  
names, or giving  
fictitious names,  
to be punished.

Penalty.

Sect. 79. If any person refuses to pay any waterman the money demanded by him for carrying such person in his boat, and refuses to give to such waterman, upon demand, his name, or the name of his place of abode, or instead thereof wilfully gives any false name or names, for the purpose of preventing himself being summoned, every person refusing to make such payment, or to give his real name, or the name of the place of his abode, or giving any false or fictitious name or place of abode as aforesaid, shall for every such offence incur a penalty not exceeding 5*l.*, and such offender may thereupon be summoned, and otherwise proceeded against, not only for the recovery of the money justly due to such waterman, and reasonable satisfaction for his or their loss of time and costs, but also for enforcing the payment of the said penalty.

Court empowered  
to make bye-laws,  
and alter those  
made by company,  
if not inconsistent  
with act, &c.

Sect. 80. The said court of master, wardens, and assistants are hereby empowered from time to time to make such byelaws as they think proper for the government of the said company, and for the government and regulation of lightermen and watermen, and for

carrying into effect the purposes of this act and the several powers and authorities hereby vested in the said company, with power to annex reasonable penalties and forfeitures for the breach of such byelaws respectively, not exceeding the sum of 5*l*. for any one offence, so that the same byelaws be not inconsistent with any of the laws of this kingdom, or with this act, or with any of the byelaws, rules, orders, or regulations made or to be made by the conservators of the river Thames under the authority of the Thames Conservancy Act, 1857, or of any act for the time being in force relating to the conservancy of the river Thames; and also from time to time to alter, amend, and repeal such byelaws, or any of them: Provided always, that no such byelaws shall in any way interfere with the tolls of the Sunday ferries herein-before authorised, and that no such byelaws or alterations in byelaws shall be of any validity, until they shall have been approved by the conservators of the river Thames.

Sect. 81 directs that byelaws made by the court of master, wardens, and assistants be printed and made public.

Sect. 85. Except as hereinafter mentioned, all penalties and forfeitures imposed by this act, or by any byelaw made in pursuance thereof, shall be recovered in manner directed by 11 & 12 Vict. c. 43.

Sect. 86. That in every case in which any oath is by this act directed to be made or taken, or any matter or thing is directed to be proved by oath, the conservators of the river Thames, or the said court, or the said master, or one of the wardens or assistants present at any court of master, wardens, and assistants, or any court for apprentices and the admission of freemen, or any two or more of the said master, wardens, and assistants, before whom such oath is hereby directed to be made or taken, or such matter or thing to be proved, shall have full power to administer the oath, or instead thereof to receive a solemn affirmation by any of the people called Quakers, as the case may be.

Sect. 87. In case any freeman, or the widow of any freeman, or any apprentice of a widow of a freeman of the said company, shall make complaint to the said master, wardens, and assistants for the time being of the said company, or any two or more of them, against any other such freeman, widow, or apprentice, for any offence or misbehaviour against this act, or any of the said rules or byelaws made or to be made and approved of as aforesaid, it shall be lawful for the said master, wardens, and assistants, or any two or more of them, (as well as for the lord mayor, recorder, alderman, or justice respectively having jurisdiction with\* the limits of this act,) and they are hereby required to hear and determine concerning any such offence or misbehaviour, and convict the offender as herein-after is mentioned and directed; (that is to say,) in every such case it shall be lawful for the master, wardens, or assistants, or any two or more of them, upon complaint made by any such freeman, widow, or apprentice as aforesaid of any such offence or misbehaviour, within thirty days after the commission thereof, to cause the freeman, widow, or apprentice offending as aforesaid to be summoned personally, or by leaving such summons at his, her, or their last or usual place of abode, to appear and answer to the said complaint; and the party accused being before the said master, wardens, and assistants, or any two or more of them, to hear and examine upon oath the complainant, or any witness or witnesses, touching such offence or misbehaviour, and determine concerning the same; and if the freeman, widow, or apprentice accused shall be convicted of any such offence or misbehaviour, it shall be lawful for the said master, wardens, and assistants, or any two or more of them, and they are hereby required to impose a fine upon such offender for the said offence or misbehaviour, not exceeding the penalty or penalties inflicted by this act, or the said rules or byelaws made or to be made and approved of as aforesaid, or any of them; and

1. *The Navigation of the River.*

22 & 23 Vict. c. cxxxiii.

Manner of recovering penalties.

Power to master, &c. to administer oaths.

Members of the court of the company to hear and determine on complaints.

\* *Sic.*

1. *The Navigation of the River.*

22 & 23 Vict. c.  
cxxxiii.

if the freeman, widow, or apprentice convicted, shall not forthwith pay the penalty or forfeiture so imposed upon him, her, or them, it shall be lawful for the said lord mayor, recorder, or any alderman or justice as aforesaid, within whose jurisdiction as aforesaid the said offence or misbehaviour shall have been committed, and he is hereby required, upon production to him or them respectively of such conviction drawn up in writing, to issue his warrant for apprehending such freeman, widow, or apprentice, and to cause such penalty or forfeiture to be forthwith paid or raised, or to commit the party convicted, in the same manner in all respects as he is entitled to do with respect to any party who shall be convicted by or before the said lord mayor, recorder, alderman, or justice respectively; and such conviction by the said master, wardens, and assistants, or any two or more of them, shall be drawn up in the following form of words, or in any other form of words to the same effect; (that is to say,)

*Form of conviction* } *Be it remembered, that on the      day of      , in*  
by the court of } *the      year of her Majesty's reign, A. B. is con-*  
master, wardens, } *victed before us [describe here master, wardens, or assist-*  
                              } *ants, as the case may be,] of the company of watermen*  
                              } *and lightermen of the river Thames, for [here set forth the offence], and we do*  
*adjudge him to pay and forfeit for the same the sum of      .*

*Given under our hands and seals, the day and year aforesaid.*

Constables not to apprehend or take watermen out of their boats until moored.

Sect. 88. No constable or other officer shall, by virtue of any warrant, apprehend or take any freeman, apprentice, or licensed lighterman or waterman out of any passenger boat or craft on which he may happen to be rowing or navigating, until such boat or craft is safely moored, unless there are sufficient hands on board to row or navigate or take care thereof; and notice of this provision shall be inserted in every warrant for the information of the constable or other officer who may have the execution thereof.

For compelling the attendance of witnesses.

Sect. 89. If any person who shall be summoned as a witness to give evidence before the conservators of the river Thames, or the master, wardens, or assistants, respecting any matter of fact relating to any information or complaint, for any offence against this act, or any such rules or byelaws as aforesaid, either on the part of the prosecutor or the person or persons accused, shall, after a reasonable sum for his or her costs shall have been paid or tendered to him or her, refuse or neglect to appear at the time and place by such summons appointed, without a reasonable excuse for such neglect or refusal, such person or persons shall forfeit for every such neglect or refusal any sum not exceeding 40s.

Application of penalties.

Sect. 90. That all penalties and forfeitures which shall be levied or recovered and received in pursuance and by virtue of this act shall be paid to the said court of master, wardens, and assistants of the said company for the time being, or to the clerk of the said company, at their hall, within one week after the same shall be levied, and shall be paid and distributed to the poor, aged, and decayed freemen of the said company and their widows, except only that it shall be lawful for the said lord mayor, recorder, and aldermen, or justices, master, wardens, or assistants respectively, before whom any offender or offenders shall be convicted, out of the said forfeitures and penalties, to reward any person or persons who shall inform of any offence or offences against this act, or the said rules or byelaws, according to the discretion of such lord mayor, recorder, alderman, or justices, master, wardens, or assistants respectively, so as such reward exceed not one half part of the respective penalties or forfeitures.

Proceedings not to be quashed for want of form.

Sect. 92. That no proceedings to be had, touching the conviction of any offender or offenders against this act, or any matter or thing to be done or transacted in or relating to the execution of this act, shall be vacated or quashed for want of form only, or be removed or removable

by certiorari, or any other writ or process whatsoever, unto any of her Majesty's courts of record at Westminster, any law or statute to the contrary notwithstanding.

2. *The Conservancy of the River.*

## II. The Conservancy of the River.

The "Thames Conservancy Act, 1857," 20 & 21 Vict. c. cxlvii., "An act to provide for the conservation of the river Thames, and for the regulation, management, and improvement thereof," recites that the preservation and improvement of the river Thames is of great national importance: and that the Queen's most excellent majesty in right of her crown is or claims to be seised of the ground and soil of the seas around the United Kingdom of Great Britain and Ireland, and of the shores thereof so far as the sea flows and reflows between the high and low water marks at ordinary tides, and also of all rivers, creeks, and arms of the sea, and the ground and soil thereof, and of the shores of the same respectively, between the ordinary high and low water marks from the mouths or entrances to the same from the main sea upwards, and into the country so far as the water flows and reflows at such ordinary tides, and of all the ports and havens of the United Kingdom, save and except only as therein mentioned, and enacts,

20 & 21 Vict. c. cxlvii.

Sect. 1. In this act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Interpretation of terms.

The word "person" shall include corporations, whether aggregate or sole, and any commission or other public body although not incorporated: "Person"

The words "superior courts" shall mean her Majesty's superior courts of record at Westminster: "Superior courts."

The word "vessel" shall mean any ship, lighter, keel, barge, boat, wherry, raft, or craft, or any other kind of vessel whatever, whether navigated by steam or otherwise: "Vessel."

The word "Master," when used in relation to any vessel shall mean any person, whether the owner, master or other person lawfully or wrongfully having or taking the command, charge, or management of the vessel for the time being: "Master."

The word "lighter" shall include barge: "Lighter."

The word "ballast" shall include every kind of gravel, sand, and soil, and every commodity or thing commonly used for the ballasting of vessels: "Ballast."

The high water of spring tides at one mile below London Bridge shall be taken as level with the mark fixed by the late Captain Huddart in the year one thousand eight hundred upon the Hermitage entrance lock to the London Docks, and transferred from thence to one of the piers of the bridges, commonly called "Trinity standard;" the low water of spring tides shall be taken as eighteen feet below the level of the aforesaid mark at the same point; and the high and low water of spring tides at other places shall correspond with the above, allowing for the difference of flow and ebb at each particular place: "Trinity Standard of High Water."

The expressions "lord mayor" and "mayor of the city" shall mean the lord mayor for the time being of the city of London: "Lord mayor, mayor of the city."

The words "common council" shall mean the mayor, aldermen, and commons of the city of London in common council assembled: "Common council."

The words "mayor and commonalty and citizens" shall mean the mayor and commonalty and citizens of the city of London: "Mayor and commonalty and citizens."



2. *The Conservancy of the River.*

20 & 21 Vict. c. cxlvii.

"Master, &c. of Trinity House."

"Licence of the conservators"

"Permission of conservators."

"River Thames, &c."

"Shore."

"Justice."

"Two justices."

"General or quarter sessions."

"Secretary."

"Gaol."

"Pier."

"Lands."

"Wharf."

Appointment of conservators, who are to be a corporation.

How indictments are to be preferred.

The expression "the master, wardens, and assistants of the corporation of Trinity House of Deptford Strond" shall mean the master, wardens, and assistants of the guild, fraternity, or brotherhood of the most glorious and undivided Trinity, and of Saint Clement, in the parish of Deptford Strond in the county of Kent, commonly called the corporation of Trinity House of Deptford Strond:

The words "licence of the conservators" shall mean a licence under the seal of the conservators of the river Thames:

The words "permission of the conservators" shall mean permission in writing signed by the secretary of the conservators:

The expression "river Thames," or "river," shall mean so much of the river Thames as is between the city's stone near the town of Staines in the county of Middlesex and Yenleete in the county of Kent:

The word "shore" shall mean the shores of the river so far as the tide flows and reflows between high and low water marks at ordinary tides:

The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter, and shall include the lord mayor and every other magistrate of the city of London:

Where any matter shall be authorised or required to be done before two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together in petty sessions:

The words "general or quarter sessions" shall mean the general or quarter sessions of the city, borough, liberty, or place in which the order or decision from which the appeal shall be made shall have been made:

The expression "secretary" shall mean the secretary of the conservators, and shall include the word "clerk":

The word "gaol" shall mean and include any usual gaol, prison, or house of correction:

The word "pier" shall include a floating pier:

The word "lands" shall extend to and include messuages, buildings, lands, tenements, and hereditaments of any tenure:

The word "wharf" shall include any bank, wall, or building adjoining the river:

And where the doing of any act or thing is made punishable by this act, or by any of the byelaws to be made in pursuance thereof, with any penalty, fine, or forfeiture, the causing, procuring, or permitting such act or thing to be done shall be punishable in like manner.

Sect. 2. There shall be twelve conservators for carrying this act into execution, and such conservators shall be a body corporate by the name of "the conservators of the river Thames," and by that name shall have perpetual succession and a common seal, and shall have power to take, purchase, and hold lands, tenements, and hereditaments, goods, chattels, and other property, for any of the purposes of this act, subject to the restrictions herein contained.

Sect. 31. It shall be lawful for the conservators to sue and be sued, and to prefer any bill of indictment or information, or take any other proceedings, against any person who shall steal, take, or carry away, wilfully deface or injure, any property, article, or thing belonging to the conservators, and in every such case it shall be sufficient to state generally the property, article, or thing in respect of which such proceedings shall have been taken to be the property of the conservators by their corporate name.

Sect. 32. Any summons, notice, writ, or other proceeding at law or in equity required to be served upon the conservators may lawfully be served by delivering the same personally to the secretary, or by leaving the same at the office of the conservators.

Sect. 35. The conservators shall cause entries of the names of all the conservators who shall attend any conservancy meeting, and notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by or on the behalf of the conservators, and of the orders and proceedings of all conservancy meetings, and of all meetings of committees, to be duly entered in books to be from time to time provided for that purpose, which shall be kept under the superintendence of the conservators, and every such entry shall be signed by the person who was in the chair at any such meeting, and such entry so signed shall be received as evidence in all courts and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making such orders being conservators or members of such committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed until the contrary be proved, and all such books shall at all reasonable times be open to the inspection of the conservators.

Sect. 40. Every officer appointed or employed by the conservators under or by virtue of this act shall from time to time, when required by the conservators, make out and deliver to them, or to any person appointed by them for that purpose, a true and faithful account in writing under his hand of all the moneys received by him on behalf of the conservators, and such account shall state how and to whom and for what purpose such moneys have been disposed of, and, together with such account, such officer shall deliver the vouchers and receipts for such payments, and every such officer shall pay to the conservators, or to any person appointed by them to receive the same, all moneys which shall appear to be owing from him upon the balance of such account.

Sect. 41. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof, when thereunto required, or if for five days after being thereunto required he fail to deliver up to the conservators, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this act or belonging to the conservators, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices at a time and place to be set forth in such summons to answer such charge, and upon the appearance of such officer, or in his absence upon proof that such summons was personally served upon him or left at his last known place of abode, such justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer, or upon evidence, or upon inspection of the account, that any monies of the conservators are in the hands of such officer, or owing by him to the conservators, such justices may order such offender to pay the same, and if he fail to pay the amount it shall be lawful for such justices to grant a warrant to levy the same by distress, or in default thereof to commit the offender to gaol, there to remain without bail for a period not exceeding three months, unless the same be sooner paid.

Sect. 42. If any such officer refuse to make out any such account in writing, or to produce and deliver to the justices the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the conservators, such justices may lawfully com-

*2. The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Service of notice on conservators. Proceedings to be entered into a book, and to be evidence.

Officers to account.

Summary recovery against persons failing to account.

Penalty on officers refusing to deliver up documents.

2. *The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Where officer about to abscond, a warrant may be issued in the first instance.

Commitment not to discharge sureties.

Conservators may make byelaws for the regulation of the river.

Penalties not exceeding 5*l.* may be imposed by byelaws.

Byelaws to be approved and published in newspapers.

Proof of byelaws.

All the estate of

mit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts (if any) in his possession or power belonging to the conservators: Provided always, that if any conservator or other person acting on behalf of the conservators shall make an oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made, instead of issuing his summons, to issue his warrant for bringing such offender before such two justices as aforesaid, but no person executing such warrant shall keep such officer in custody longer than twenty-four hours without bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody so as to be brought before two justices at a time and place to be named in such order, unless such offender give bail to the satisfaction of such justice for his appearance before two justices to answer the complaint of the conservators.

Sect. 43. No such proceeding against or dealing with any such officer as aforesaid shall deprive the conservators of any remedy which they might otherwise have against any surety of such officer.

Sect. 44. The conservators shall have full power and authority from time to time to make such byelaws, rules, orders, and regulations as to them shall seem right and proper for the regulation, management, and improvement of the river and the navigation thereof, and for compelling vessels at anchor or otherwise to carry or exhibit lights from sunset to sunrise, and for the government, good order, and regulation of vessels in or upon the river, and of persons navigating the same, or using the towing-paths, piers, landing places, or any of the locks thereof, also for the mooring of timber, and for the government and regulation of the officers, servants, and workmen in their employ, as the conservators shall think proper, and from time to time to alter, vary, or repeal such byelaws, rules, orders, and regulations, or any of them, as they shall think fit, so that no such byelaw, rule, order, or regulation be contrary to the laws of England or to the provisions of this act, and so as the same be reduced into writing, and shall be under the common seal of the conservators.

Sect. 46. It shall be lawful for the conservators by any such byelaws, rules, orders, and regulations to impose and inflict such reasonable fines and forfeitures for the breach or non-performance of such byelaws, rules, orders, and regulations, or any of them, as they shall think fit, so that no one penalty or forfeiture shall exceed the sum of 5*l.* for any one offence: Provided always, that such byelaws shall be so framed as to allow the justices before whom any penalty imposed thereby may be sought to be recovered to order the whole or a part only of such penalty to be paid.

Sect. 47. No byelaws, rules, orders, or regulations made under the powers for that purpose herein contained shall be in force until the same shall have been sent to the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, and shall have been approved by one of them, nor until after thirty days after the same shall have been published twice in some London morning newspaper; and a copy of any such byelaws, rules, orders, and regulations under the common seal of the conservators, with a declaration thereon signed by the secretary that the same have been so approved and published as aforesaid, with the date of such approval and publication, shall be received as evidence of such byelaws, rules, orders, and regulations and of the approval and publication thereof as aforesaid, in all courts of law and equity and before all justices.

Sect. 50. All the estate, right, title, and interest of the mayor and

commonalty and citizens of the city of London in the bed and soil and shores of the river Thames, from Staines in the county of Middlesex to Yantlett in the county of Kent, and all the estate, right, title, and interest to which her Majesty was on the 23rd day of February, 1857, entitled in right of her crown of, in, and to the bed, and soil, any shores of the river Thames within the flux and reflux of the tides, bounded eastward by an imaginary line to be drawn from the entrance of Yantlett creek in the county of Kent on the southern shore of the said river to the city stone opposite to Canvey Island in the county of Essex on the northern shore of the said river, and of, in, and to all encroachments, embankments, and enclosures therefrom or thereupon, except such parts thereof as are hereinafter specified, shall from and after the commencement of this act be and the same are hereby vested in the conservators; but the mayor and commonalty and citizens shall continue liable to account for any moneys which may have accrued due to her Majesty up to the commencement of this act, under or by virtue of the hereinbefore in part recited articles of agreement of the eighteenth day of December one thousand eight hundred and fifty-six, in respect of the revenues received or to be received since the thirty-first day of December one thousand eight hundred and fifty-three, as provided for in the eighth clause of those articles.

Sect. 51. Provided always, that the portion of the bed or soil or shores of the river Thames, or any encroachment, embankment, or inclosure therefrom or thereupon, in front of or immediately adjacent to any lands, buildings, or hereditaments whereof or whereto her Majesty, or any person or body in trust for her, was or were on the eighteenth day of December one thousand eight hundred and fifty-six seised or entitled in possession, reversion, or remainder, or which on the said eighteenth day of December one thousand eight hundred and fifty-six was the property of any department of her Majesty's government, or in the possession of any such department or any officers of the same, shall not be vested in the conservators, but shall continue vested in or in trust for her Majesty, or in or in trust for such department or officers, and be subject to the exercise therein of the same powers, authorities, rights, and privileges as if this act had not been passed.

#### *Tolls.*

Sect. 65. It shall be lawful for the conservators from time to time to erect and maintain such toll houses or other conveniences on or near each pier or landing place erected by them as they shall think fit; and tolls, not exceeding the toll following, shall and may be demanded and taken at each such pier or landing place so erected as aforesaid by such persons as the conservators shall from time to time appoint before any vessel shall be permitted to make fast to, or to moor or touch at any such pier or landing place for the purpose of landing or embarking passengers or goods; (that is to say,)

On steam and other passage vessels which shall land or embark any passengers or goods at or from any pier or landing place for each and every time of calling at the same, for every passage, sixpence, such toll to be paid by the master of each vessel.

Sect. 66. It shall be lawful for the collector of the said toll at any such pier or landing place to prevent any boat or vessel, the master of which shall neglect or refuse or \* pay the proper amount of toll payable by him, from mooring or touching at such pier or landing place.

Sect. 67. And for enforcing the payment of toll as well in respect to steamboats using the said piers or landing places, it shall be lawful for any collector of the said tolls to seize and detain the goods and chattels or the boat or vessel of any person who shall neglect or refuse

#### *2. The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

the corporation of London and the crown in the bed and soil of river Thames vested in conservators.

Reservation of part of the bed and soil.

Conservators may take toll from steamboats using the piers.

In case tolls not paid, boats may be prevented from using pier.

\* *Sic.*

For enforcing the payment of tolls.

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to pay the proper amount of toll payable by him; and in case the said toll shall not be fully paid and satisfied, together with all reasonable costs and charges of making, detaining, and keeping such distress, within the space of five days, the said collector shall and may sell the same, rendering the overplus (if any), after deducting such costs and charges of making, detaining, keeping, and selling such distress, to the owner thereof: Provided always, that no collector shall be answerable for any loss, injury, or damage which may happen to such distress while in his custody, unless the same shall happen through his wilful or gross negligence, act, or default.

Disputes respecting tolls and charges to be settled by a justice.

Sect. 68. If any dispute shall arise about the amount of toll due, or the costs and charges of distraining, keeping, or selling any distress, it shall be lawful for the said collector or person so distraining to detain the distress, or the money arising from the sale thereof, until the amount of toll due, or the charges of distraining, keeping, and selling the distress, as the case may be, shall be ascertained by some justice, who, upon application made to him for that purpose, shall examine the said matters upon the oaths of the parties or other witnesses, and shall determine the amount of toll due, and shall also assess the charges of such distress and sale, and all other reasonable costs, all which sums so determined or assessed shall be paid to the collector before he shall be obliged to return the said distress, or the overplus after the sale thereof, or of any part thereof.

Tolls may be reduced and raised again.

Sect. 69. The conservators shall have full power from time to time to lower or reduce the said tolls, and it shall be lawful for them in like manner again to raise the said tolls to such sum as they shall think proper, not exceeding the sums before mentioned, and so from time to time as often as they shall deem it necessary or expedient.

Notice of tolls to be given.

Sect. 80. Provided always, that the said tolls shall not be levied, nor shall any increase be at any time made in the amount thereof, unless four weeks notice of such tolls or of such intended increase shall have been advertised in the London Gazette, and also in two daily London morning newspapers: Provided also, that a statement of the amount of the toll so from time to time to be levied shall be placed in some conspicuous part of the office of the conservators.

Toll gatherers to put up their christian and surnames, painted on boards, in front of toll house.

Sect. 81. That every collector of the aforesaid tolls shall place his christian and surname, painted on a board in white letters on a black ground in fair legible characters of such size as the conservators shall direct, in the front of the toll house where he shall be stationed to collect the said tolls immediately upon his coming on duty, and shall continue the same so placed during the whole time he shall be upon duty; and if any collector of the said tolls shall not place such board as aforesaid in the manner and during the time aforesaid, or shall demand or take a greater or less toll from any person than he shall be authorised to do by virtue of the powers of this act, or shall refuse to permit or suffer or shall in anywise hinder any person from reading such christian or surname, or shall refuse to tell his christian or surname to any person who shall demand the same upon having paid the said toll, or shall give a false name upon such demand, then and in every such case every such collector shall forfeit and pay any sum not exceeding ten pounds for every such offence, and such penalty shall be recovered and applied as other penalties are by this act directed to be recovered and applied.

Penalty on counterfeiting toll tickets.

Sect. 72. If any person shall forge, counterfeit, or alter, or shall deliver to or receive of any other person, any note or ticket with intent to avoid the payment of any toll or any part thereof, then and in every such case every such person shall for every such offence forfeit and pay any sum not exceeding five pounds, to be recovered in like manner as any other penalties or forfeitures can or may be recovered by virtue of this act, one moiety whereof shall be paid to the informer, and the

other moiety shall be applied in such manner as other penalties and forfeitures are herein directed to be applied.

Sect. 73. When and so often as any collector of tolls shall neglect or refuse to perform or become incapable of performing his duty, or shall abscond or absent himself, it shall be lawful for the conservators to discharge such collector so neglecting or refusing to perform or become incapable of performing his duty, or absconding or absenting himself, and to appoint some other person to be a collector of the said tolls; and if any collector of the said tolls who shall be discharged from his said office by virtue of this act, or the wife or widow or any of the children, family, or other representatives of any collector who shall die or be discharged, or any other person who may have the possession of any toll house, shall neglect or refuse to deliver up the possession thereof for the space of twenty-four hours next after demand thereof made by notice in writing for that purpose given to such collector or other person, or left at any such toll house, then and in any of the said cases it shall be lawful for any justice, by warrant under his hand and seal, to order a constable or other peace officer, with such assistance as shall be necessary, to enter such toll house in the daytime, and to remove the persons who shall be found therein, together with their goods, out of such house, and to put the conservators or their new appointed collector into possession thereof.

Sect. 75. It shall be lawful for the conservators from time to time to lease or demise all or any of the said tolls for any term of years not exceeding three years at any one time, to take effect in possession and not in reversion, for such rent payable at such times and under such covenants as they shall think fit, which rent shall be applied for the purposes of this act.

Sect. 76. In case any person shall resist or make forcible opposition against any person employed in the due execution of this act, or shall assault any surveyor, engineer, or agent, or any collector of toll, in the due execution of his office, or shall forcibly use any pier or landing place to be erected by virtue of this act without having paid the said toll, every such person shall for every such offence forfeit and pay any sum not exceeding 5*l*.

Sect. 77. The conservators shall from time to time cause to be painted on boards or printed or written on paper in large and legible characters, and affixed and continued on some conspicuous part of every such pier or landing place, the amount of the tolls to be taken thereat under the authority of this act, and no toll shall be payable by or required of any person during such time as such board or paper shall not continue to be affixed thereon: Provided always, that if any such board or paper shall be destroyed, injured, or obliterated, such toll shall continue payable during such time as may be reasonably required for the restoration or reparation of such board or paper, in the same manner as if the same had continued affixed or in the state required by this act.

#### *Harbour-Masters.*

Sect. 78. Provides that it shall be lawful for the conservators from time to time to appoint harbour-masters and deputy harbour-masters.

Sect. 79. Harbour-masters and deputy harbour-masters to be approved by the Trinity House, who may procure them to be removed.

Sect. 80. It shall be lawful for the harbour-masters for the time being to give directions for all or any of the following purposes; (that is to say,)

For regulating the time and manner in which any vessel shall enter into, go out of, or lie in the river Thames, and the position, mooring, or unmooring, placing or removing any vessel within the same:

For regulating the manner in which any vessel shall take in or

#### *2. The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Conservators may appoint collectors, and for neglect of duty dismiss them and appoint others. If collector, &c. refuse to give up toll house, justices may give possession.

Conservators empowered to lease the tolls.

Penalty for assaulting collectors, &c.

Amount of tolls to be affixed to every pier or landing place.

Powers of harbour-masters.

2. *The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Penalty on not complying with the directions of the harbour-master.

Power of harbour-masters to remove vessels.

Penalty on master or commander for obstructing harbour-master.

Harbour-master may slacken ropes.

Wharfs to be repaired.

discharge its cargo or any part thereof, or shall take in or deliver ballast within the river Thames:

Provided always, that it shall not be lawful for such harbour-master to direct that any vessel shall lie or be within any part of the river Thames where by any act of Parliament it shall or may be directed that no vessel shall lie or be, nor to unmoor or remove from any part of the river Thames duly appointed as a boarding, landing, or quarantine station, any vessel moored or placed there under the authority of the commissioners of customs, nor to moor or place any vessel within low-water mark of or alongside any quay, custom-house station, or other place appropriated to the service of the Customs.

Sect. 81. The master or commander of every vessel within the river Thames shall regulate such vessel according to the directions of the harbour-master for the time being made in conformity with this act, and any master or commander of any vessel who, after notice in writing, or partly printed or partly in writing, signed by the said harbour-master, of any such direction served upon him, shall not forthwith regulate such vessel according to such direction, shall be liable to a penalty not exceeding 5*l*.

Sect. 82. If the master or commander of any vessel within the limits of this act shall not moor, unmoor, place, or remove such vessel according to the directions of the said harbour-master for the time being, in writing, given to the said master or commander, it shall be lawful for any such harbour-master to cause such vessel to be moored, unmoored, placed, or removed according to the directions aforesaid, and to employ a sufficient number of persons for that purpose, and the expenses attending such mooring, unmooring, placing, or removing shall be paid by such master or commander, and shall, together with the costs of ascertaining and recovering the same, be ascertained and recovered from any such master or commander in the same manner as any damages for the ascertaining and recovering of which no special provision is contained in this act are hereby directed to be ascertained and recovered.

Sect. 83. If any master or commander of any vessel within the river Thames, or any person on board the same, shall hinder the said harbour-master or any person employed by him in mooring, unmooring, placing, or removing such vessel in manner aforesaid, such master or commander or other person shall forfeit for every such offence a sum not exceeding 5*l*.

Sect. 84. If any master or commander or other person on board any vessel which shall be moored or fastened within the river Thames shall not, upon demand of the said harbour-master, unloose or slacken the rope or chain by which such vessel shall be moored or fastened, or if there shall be no person on board of any such vessel so moored or fastened, it shall be lawful for the said harbour-master to unloose or slacken the rope or chain by which such vessel shall be so moored or fastened as aforesaid, and to cause, if necessary, a sufficient number of persons for the protection of the same to be put on board such vessel, and all expenses thereby incurred shall be paid by the master or commander of such vessel.

*Repairs.*

Sect. 94. When in the opinion of the conservators any wharf or any portion thereof shall be out of repair or insecure, so as to be dangerous to any person passing along the river Thames, or to any vessel either moored alongside of or passing by the same, or is in any manner injurious or likely to be injurious to the river Thames, or to the free navigation thereof, it shall be lawful for the conservators, by notice in writing given to the owner or occupier of such wharf, or, if such owner or occupier cannot be found, left upon or affixed to such wharf, to require the owner or occupier thereof to repair such wharf to the satis-

faction of the surveyor for the time being of the conservators within a time to be limited in such notice; and in case the owner or occupier of such wharf shall refuse or fail or neglect to repair such wharf to the satisfaction of such surveyor within the time to be limited as aforesaid, then and in such case it shall be lawful for the conservators to put such wharf into repair, and to recover the expenses incurred thereby from the owner or occupier thereof, or the owner or occupier of any house or land to which such wharf may belong, or with which the same may be connected and used; and such owner or occupier shall also forfeit a sum not exceeding 10*l.* for every day during which such wharf shall continue out of repair after the expiration of the time limited in the notice for the repair thereof.

2. *The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Penalty.

Sect. 96. The owner of every vessel navigating the river Thames shall be and he is hereby made answerable for all trespasses, damages, spoil, or mischief that shall be done by such vessel, or by any of the boatmen or other persons belonging to or employed in or about the same, by any means whatsoever, to any of the property or effects of the conservators, or the banks or other works erected, maintained, or repaired under the provisions of this Act; and the owner of every such vessel shall, for every such trespass, damage, spoil, or mischief so committed as aforesaid, upon conviction of the person so committing the same before any justice on the oath of any credible witness, or on the confession of the party offending, pay to the secretary of the conservators such damages, satisfaction, and compensation as shall be ascertained, fixed, and determined by such justice, together with all costs, charges, and expenses attending such conviction, provided that such damages, satisfaction, and compensation shall not exceed the sum of 20*l.*, besides the costs of such conviction; and in case such damages, satisfaction, or compensation, and costs, shall not be paid on demand, the same shall be recoverable in the same manner as any penalty is by this act directed to be recovered; but in case such damage shall exceed the sum of 20*l.*, the said owner may be sued by the conservators for such damages, satisfaction, or compensation.

Owners accountable for damage done by boatmen to works or property of the conservators.

Sect. 97. Provided always, that every such boatman or other person so offending as last aforesaid shall be answerable for and shall repay all such damages, satisfaction, and compensation as shall be so ascertained, fixed, and determined, and recovered as aforesaid, with all the costs of levying and recovering thereof, to his master or owner; and in case of nonpayment thereof on demand, on oath made by such master or owner of the payment made by him of such damages, satisfaction, compensation, and costs, and that the same have been demanded of such boatman or other person respectively, but that the same have not been repaid (such oath to be made before any justice), the amount thereof shall be recovered in like manner as any penalty is hereby directed to be levied and recovered by warrant under the hand and seal of such justice.

Boatmen to be answerable to their masters for all such damages and costs.

### *Ballast.*

Sect. 101. No ballast shall be unladen or thrown from or out of any vessel, barge, or lighter into the river Thames, and the master of any vessel, barge, or lighter in the river Thames who shall throw or cause or suffer to be thrown any ballast out of any such vessel, barge, or lighter into the river Thames, or shall place or cause or suffer to be placed any such ballast on any shore or ground below the high-water mark in the river Thames, shall forfeit for every such offence any sum not exceeding the sum of 20*l.*

Penalty on throwing ballast out of vessels into the Thames.

Sect. 102. Every person who shall unload, put, or throw into any part of the river Thames, or on any shore or ground below the high-water mark of the river Thames, any rubbish, earth, ashes, dirt, mud, soil, or other matter, or allow any offensive matter to flow into the river Thames, shall forfeit for every such offence any sum not exceeding 20*l.*

Penalty on throwing rubbish, &c. into the Thames.



2. *The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Admiralty may order local survey of works at expense of persons commencing works.

Works which have not been approved of to be removed.

Trinity corporation to remove shoals, &c. when required by the conservators.

The conservators may prevent ballast from being taken in places where its removal might be injurious to the navigation.

*Survey of Works.*

Sect. 106. If at any time or times it shall be deemed expedient by the lord high admiral of the United Kingdom, or the commissioners for executing the office of lord high admiral, to order a local survey and examination of any work upon the bed or shores of the said river Thames below high-water-mark, or of the intended site thereof, the person about to commence or who may have commenced or executed any such work shall defray the costs of every such local survey and examination, and the amount thereof shall be a debt due to her Majesty from such person as aforesaid, and if not paid upon demand may be recovered as a debt due to the crown, with the costs of suit, or may be recovered, with costs, as a penalty is or may be recoverable under this act.

Sect. 107. And it shall be lawful for the lord high admiral, or the said commissioners or the conservators, if he or they think fit, to abate and remove every work upon the said bed or shores which he or they may not have approved of or permitted, and to restore the site thereof to its former condition, at the cost of the persons commencing or who may have executed any such work.

Sect. 109. It shall be lawful for the master, wardens, and assistants of the corporation of Trinity House of Deptford Strond, and they are hereby authorised and required, when and as often as and within a reasonable time after they shall have been required by the conservators so to do, to dig, raise, take up, remove, and carry away, or otherwise reduce in such manner and to such depth and extent as they may be required, all such shoals, shelves, and banks in the river Thames below Teddington Lock as the conservators shall at any time or times and from time to time designate and point out by notice in writing to be addressed to the master, wardens, and assistants of the corporation of Trinity House of Deptford Strond, and lay and deposit the gravel, sand, and soil, and other materials of which such shoals, shelves, and banks may be composed, or which may be obtained in reducing the same, or which shall not be needed by the master, wardens, and assistants of the corporation of Trinity House of Deptford Strond for the ballasting of vessels, in such place or places as may be required or mentioned in such notice, they the conservators paying to the master, wardens, and assistants of the corporation of Trinity House of Deptford Strond (which the conservators are hereby empowered and authorised to do) such sum and sums of money as shall or may from time to time be settled and agreed upon by and between the conservators and the said master, wardens, and assistants as a reasonable and proper remuneration to the said master, wardens, and assistants, for the costs and expenses which they may have incurred in digging, raising, taking up, removing, and carrying away, or otherwise reducing such shoals, shelves, and banks, and in laying and depositing the materials thereof in such place or places as aforesaid.

Sect. 110. It shall be lawful for the conservators at any time or times, by notice in writing addressed to the master, wardens, and assistants of the corporation of Trinity House of Deptford Strond, to prohibit the said master, wardens, and assistants, their officers, servants, and workmen, from raising or taking any ballast or any materials for ballast in any place or places in or from which the raising or taking of ballast or materials for ballast may in the judgment of the conservators be injurious to the navigation of the river Thames, or to the due execution of the works to be directed by them; and the master, wardens, and assistants of the corporation of Trinity House of Deptford Strond shall not, after the delivery to them of any such notice as last aforesaid, raise or take any ballast or materials for ballast in any place or places in or from which

they may have been by any such notice prohibited by the conservators from raising or taking any such ballast or materials for ballast as aforesaid.

2. *The Conservancy of the Thames.*

*Accounts.*

20 & 21 Vict. c. cxlvii.

Sect. 114. The conservators shall cause books to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and paid for or on account of this act, and of the several purposes for which sums of money shall have been received and paid, and which books shall at all seasonable times be open to the inspection of the conservators and every mortgagee of and creditor on the fines, rents, tolls, and other dues and profits payable under this act, without fee or reward; and the conservators and persons aforesaid, or any of them, may take copies of or abstracts from the said books without paying anything for the same; and any secretary, clerk, or other person having the custody of the said books who shall not on any reasonable demand permit any of the conservators, mortgagees, or creditors as aforesaid to inspect the said books, or take such copies or extracts as aforesaid, shall forfeit and pay for every such offence a sum not exceeding 5*l*.

Accounts to be kept of receipts and disbursements, which shall be open to inspection.

Sect. 115. The accounts of the moneys received and expended by the conservators, together with an abstract of the same, shall be produced at the annual meeting of the conservators or at some adjournment thereof, and the accounts shall be examined and settled by the conservators then present, and if the same shall be found just and true they shall be allowed by the conservators and certified accordingly under the hand of the chairman of such meeting; and after such accounts shall have been so allowed and signed, the same shall be final in regard to all persons whomsoever, unless an appeal be prosecuted against such accounts at one of the two then next general quarter sessions, which appeal it shall be lawful for any person interested in such accounts to institute, previous notice in writing of such appeal having been given to the secretary to the conservators fourteen days at least before the hearing of any such appeal.

Accounts to be examined and settled at the annual meeting.

Sect. 116. Provided always, that fourteen days at the least previously to such examination and settlement as aforesaid the conservators shall cause a full and true statement and account to be drawn out of the amount of all contracts entered into and of all moneys received and expended by virtue of this act during the preceding year, and also of all debts then owing by the conservators, and they shall allow such statement and accounts to remain for inspection at the conservancy office; and every mortgagee or creditor on the fines, rents, tolls, and other dues and profits payable under the authority of this act, and any person acting on behalf of any such creditor or mortgagee, may at all reasonable times inspect such statement and account; and the said statement and account shall be printed, and the secretary shall, on demand, furnish a copy thereof to every such mortgagee or creditor without fee, and fourteen days at the least previously to the meeting for examining and settling such account the conservators shall give public notice of such intended meeting, stating in such notice that the said statement and account are at the conservancy office ready for the inspection of the creditors or other parties interested.

Statement of accounts to be prepared, and to be open for inspection.

Sect. 117. Previously to the meeting so to be held for examining and passing the accounts of the conservators, it shall be lawful for one of her Majesty's principal secretaries of state, by any writing under his hand, to appoint some fit person to be auditor of the accounts of the conservators for the preceding year, and every such auditor shall be paid by the conservators not exceeding five guineas for every day he is fully employed on such audit, and all expenses he

Appointment and payment of auditor.

2. *The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Auditor to examine accounts and to appeal if he thinks fit.

is put to in the conducting of such accounts, provided such payment shall not exceed fifty guineas.

Sect. 118. The auditor so appointed as aforesaid shall forthwith or at the time appointed for that purpose attend at the conservancy office, or at some other convenient place to be appointed by the conservators, and from time to time shall in the presence of the secretary to the conservators, in case he shall desire to be present, proceed to audit the accounts of the conservators for the year preceding the appointment of such auditor, and the conservators shall by their secretary produce and lay before such auditor at every such meeting the statement and account herein-before mentioned, accompanied with proper vouchers in support of the same, and all books, papers, or writings in their custody or power relating thereto; and if the said account shall be found to be correct, such auditor shall sign the same; and if such auditor shall think that there is just cause to disapprove of any part of the said accounts, it shall be lawful for such auditor or any other person interested in the said accounts to appeal against any such part of the said accounts as shall be so disapproved of to one of the two next general quarter sessions of the county of Middlesex, notice in writing of such appeal being given to the secretary of the conservators fourteen days at the least prior to the hearing of such appeal.

Annual account to be transmitted to the comptroller of the city.

Sect. 119. The conservators shall every year cause an annual account in abstract to be prepared showing the total receipt and expenditure of all funds levied by virtue of this act for the year ending on the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account duly audited and certified by the secretary for the time being of the conservators, and shall transmit a copy of the said account, free of charge, to the comptroller of the chamber of the city of London immediately after the same shall have been duly audited and certified as aforesaid, such account to be preserved by him in his office, and to be open to the inspection of the public at all seasonable hours on payment of the sum of one shilling for every such inspection: Provided always, that if the secretary for the time being of the conservators shall omit to transmit a copy of such account to the comptroller of the city of London within one week after the same shall have been so audited and certified as aforesaid, he shall forfeit for every such omission the sum of 20*l*.

Penalty.

*Evidence.*

Releases to witnesses.

Sect. 143. In all legal proceedings under this act it shall be lawful for the secretary or any one or more of the conservators, by order of the conservators, to grant general or other releases for the purpose of qualifying any person in the service of the conservators to give evidence as a witness, and every such release or discharge shall be under the hands and seals of the parties giving the same.

*Tender of Amends.*

Tender of amends.

Sect. 144. If any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this act, or by virtue of any power or authority hereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made, it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Sect. 145. In all cases where any damages, costs, or expenses are by this act directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices, and if the amount so ascertained be not paid by the conservators or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the conservators or other party liable as aforesaid, and the justices by whom the same shall have been ordered to be paid, or either of them, on application, shall issue their or his warrant accordingly.

2. *The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Provision for damages not otherwise provided for.

### *Legal Proceedings and Penalties.*

Sect. 146. Where in this act any question of compensation, expenses, charges, or damages is referred to the determination of any one justice or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice or before two justices (as the case may require), at a time or place to be named in such summons, and upon the appearance of such parties, or, in the absence of them, upon proof of due service of the summons, it shall be lawful for such one justice or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties, or any of them, and their witnesses, on oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Method of proceeding before justices in questions of damages.

Sect. 147. The conservators shall publish the short particulars of the several offences for which any penalty is imposed by this act or by any byelaw of the conservators affecting other persons than the officers or servants of the conservators, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper pasted thereon, and shall cause such board to be hung up or affixed in some conspicuous place in the conservancy office, and where any such penalties are of local application shall cause such boards or papers to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference, and which particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner herein-before required.

Publication of penalties.

Sect. 148. If any person shall pull down or injure any board put up or required by this act for the purpose of publishing any byelaw or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding 5*l.*, and shall defray the expenses attending the restoration of such board.

Penalty for defacing boards used for such publications.

Sect. 149. Every penalty or forfeiture imposed by this act or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before any justice; and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear on a day and at a time and place to be named in such summons, and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or, in his absence, proof of the due service of such summons, it shall be lawful for any justice to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before him; and upon proof of the offence either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justice to convict the offender, and upon such conviction to adjudge the offender to pay the

Penalty to be summarily recovered before one justice.

2. *The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Penalties may be levied by distress.

Imprisonment in default of distress.

penalty or forfeiture incurred, as well as such costs attending the conviction, as such justice shall think fit.

Sect. 150. If upon any such adjudication as aforesaid the amount of the penalty or forfeiture and of such costs as aforesaid be not forthwith paid, the amount of such penalty and costs may be levied by distress, and any justice may issue his warrant of distress accordingly.

Sect. 151. It shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture and costs, unless the offender give sufficient security by way of recognizance or otherwise to the satisfaction of the justice for his appearance before a justice on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of distress it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty or forfeiture and costs, he may, if he shall think fit, refrain from issuing such warrant or distress, and in such case, or if such warrant shall have been issued and upon the return thereof, such insufficiency as aforesaid shall be made to appear to the justice, then such justice may by warrant cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture and costs be sooner paid and satisfied.

Distress how to be levied.

Sect. 152. Where in this act any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expense of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not unlawful for want of form.

Sect. 153. No distress levied by virtue of this act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application of penalties.

Sect. 154. The justice by whom any such penalty or forfeiture shall be imposed shall, where the application is not otherwise provided for, in all cases, except where the penalty or forfeiture is payable by the conservators, in which cases the penalty or forfeiture shall be awarded to the party suing for the same, award the same to the conservators, to be by them used and applied to the purposes of this act as to them shall appear fit, and shall order the same to be paid over to the proper officer for that purpose.

Penalties to be sued for within six months.

Sect. 155. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this act for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Damages to be made good in addition to penalty.

Sect. 156. If, through any act, neglect, or default, on account whereof any person shall have incurred any penalty imposed by this act, any damage to the property of the conservators shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty, and the amount of such damages, in case of dispute, shall be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same may be levied by distress, and any justice may issue his warrant accordingly.

Sect. 157. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall without reasonable excuse refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding 5*l.* for every such offence.

Sect. 158. It shall be lawful for any officer or agent of the conservators, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this act, or any byelaw made in pursuance thereof, and whose name and residence shall be unknown to such officer or agent, and convey him with all convenient despatch before some justice, without any warrant or other authority than this act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Sect. 159. The justice before whom any person shall be convicted of any offence against this act may cause the conviction to be drawn up according to the form in the Schedule (D.) in this act annexed.

Sect. 160. No proceeding in pursuance of this act shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts, except as is herein specially provided.

Sect. 161. If any party shall feel aggrieved by any adjudication or determination of any justice with respect to any penalty or forfeiture under the provisions of this act, such party may appeal to the general quarter sessions; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal and to abide the order of the court thereon.

Sect. 162. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid to the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable, and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

### *Saving of Particular Rights.*

Sect. 164. Nothing in this act contained shall extend to any ships or vessels belonging to Her Majesty or employed in Her Majesty's service, or to any present or future moorings of or for any of such ships or vessels, nor shall anything in this act contained repeal, alter, prejudice, or affect any of the provisions of the act of parliament passed in the fifty-fourth year of the reign of his majesty King George the Third, intituled An Act for the better Regulation of the several Ports, Harbours, Roadsteads, Sounds, Channels, Bays, and navigable Rivers in the United Kingdom, and of his Majesty's Docks, Dockyards, Arsenals, Wharfs, Moorings, and Stores therein, and for repealing several Acts passed for that Purpose.

### *2. The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Penalty on witnesses making default.

Transient offenders.

Form of conviction.

Proceedings not to be quashed for want of form.

Parties allowed to appeal to quarter sessions on giving security.

Court to make such order as the y may think reasonable.

This act not to extend to her Majesty's ships or moorings or to affect the act 54 Geo. 3, c. 159.

2. *The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Saving rights of Trinity House.

Sect. 165. Nothing in this act contained shall extend or be construed or deemed to extend to prejudice or derogate from, or in anywise alter, affect, or interfere with the jurisdiction or authority of the corporation of Trinity House of Deptford Strond, in the county of Kent, in the appointment of pilots, loadsmen, and guides, or for lastage and ballastage and office of lastage and ballastage of ships and vessels, beaconage and buoyage, and office of beaconage and buoyage, or for the erecting and setting up of beacons, buoys, lights, and lighthouses, or the fees, advantages, salaries, profits, emoluments, commodities, and rights, incidents, and appurtenances whatsoever due, payable, accustomed, appertaining, or belonging to the said corporation, or any other rights, offices, duties, and privileges whatsoever, now subsisting and in force, and held, used, or enjoyed by the said corporation under or by virtue of any royal charter or charters, grant or grants, letters patent, act or acts of parliament, or otherwise howsoever.

Protecting rights of commissioners of sewers.

Sect. 166. Nothing in this act contained shall extend to prejudice, diminish, alter, or take away any of the rights, powers, or authorities with respect to the regulations of sewers vested in the commissioners of sewers within the limits of this act, or in any person under or by virtue of any act of parliament, or to render any person liable to any penalty under this act for allowing ordinary sewage to flow into the river Thames, but all such rights, powers, and authorities vested in such commissioners or person shall be as good, valid, and effectual as if this act had not been passed.

Protecting rights of metropolitan board of works.

Sect. 167. Nothing in this act contained shall extend to prejudice, diminish, alter, or take away any of the rights or powers vested in the metropolitan board of works with reference to the construction and maintenance of sewers and any other works for the sewerage, drainage, or improvement of the metropolis.

Saving rights of dock companies in the port of London.

Sect. 168. Nothing in this act contained shall extend or be construed to extend to prejudice or affect any of the rights, powers, or privileges of any of the dock companies established under the authority of Parliament within the port of London, or any of the provisions contained in the several acts of parliament now in force relating to such dock companies or any of them.

Saving rights of companies and Abbey Mill river.

Sect. 169. Nothing in this act contained shall extend or be construed to extend to prejudice or affect the rights of the company of the master, wardens, and commonalty of the watermen and lightermen of the river Thames, or any works made or authorised to be made in pursuance of any act of parliament or any agreements entered into in relation thereto, or any works made under or in pursuance of any such agreements; and that the present course or channel of the river Thames, at the lock called Penton Hook lock in the parish of Staines, in the county of Middlesex, from the west end of the said lock or cut to the head of the Abbey Mill river, shall always be continued and preserved so that the said Abbey Mill river may be fed and supplied with water from the said river Thames, in the same manner as it was before the said lock or cut was made, and as it would have been if this act had not been passed.

Sect. 170. Saves the powers of commissioners of works under acts 9 & 10 Vict. cc. 38 & 39, 14 & 15 Vict. cc. 42 & 77, 16 & 17 Vict. c. 46.

Saving rights of the crown in the river Medway.

Sect. 171. Nothing in this act contained shall be deemed or construed to extend to prejudice or affect any right of property or title belonging to, or any of the rights, privileges, powers, or authorities vested in or enjoyed by, the Queen's most excellent Majesty, her heirs or successors in, to, or over the bed or soil of the Medway, or the shores thereof.

Reservation of rights of City of London over river Medway.

Sect. 172. Nothing in this act contained shall extend or be construed to extend to prejudice or derogate from, or in anywise alter, affect, or interfere with, the jurisdiction, power, authority, rights, or

privilege which at any time heretofore have been given or granted to, or which are now vested in, or which may be legally exercised by the mayor and commonalty and citizens of the city of London, or by the mayor and aldermen of the city of London, or by the mayor, aldermen, and common council of the city of London in common council assembled, or by the lord mayor for the time being of the said city, by prescription, usage, charter, or act of parliament, or otherwise, with regard to the conservancy and preservation and regulation of the river Medway.

Sect. 173. Nothing in this act shall extend to interfere with any rights belonging to the duchy of Cornwall, or to prejudice, diminish, alter, or take away any of the possessions, rights, profits, privileges, powers, or authorities vested in or claimed or enjoyed by the Duke of Cornwall (or the personage for the time being entitled to the Duchy of Cornwall), under or by virtue of any law, custom, grant, statute, or otherwise, or in or by any lessee, grantee, or other person holding under the said duchy.

Sect. 174. Nothing in this act contained shall extend to prejudice, diminish, alter, or take away any of the rights, privileges, powers, or authorities vested in or enjoyed by the Queen's most excellent Majesty, her heirs and successors, in right of her duchy of Lancaster, otherwise than is specially provided by this act.

Sect. 175. Nothing in this act contained shall extend or be construed to extend to prevent or hinder the societies of the Inner and Middle Temple from maintaining and keeping the embankments of their respective properties on the north side of the river Thames, and the piles in front thereof, as the same now exist, or from connecting the said embankments together by a new embankment, with piles in front thereof, and it shall be lawful for the said societies to connect the said embankments and piles, and hereafter to maintain and continue the existing embankments and piles, and the said addition thereto, and to repair and renew the same when and as occasion may require, provided such piles are placed to the satisfaction of the conservators, nor shall anything in this act extend to authorise any person, either with or without the licence of the conservators, to moor any barges or other craft opposite to the lands and property of the said societies of the Inner or Middle Temple within sixty feet of the embankment of their property, nor shall anything in this act extend to take away, alter, affect, or abridge any right, title, claim, privilege, franchise, exemption, or immunity to which the said societies of the Inner and Middle Temple, or either of them, or any person or persons in trust for them, or for their use, are now by law entitled, but the same shall remain and continue in such force and effect as if this act had never been made.

Sect. 176. Nothing in this act contained shall extend or be construed to extend to prevent or hinder the Most Honourable James Brownlow William Gascoigne Marquess of Salisbury, his heirs or assigns, from making, maintaining, or retaining any embankment or property which he or they is or are at present authorised or empowered to make, maintain, or retain by law or statute, or by virtue of an act made and passed in the eleventh year of the reign of his late Majesty King George the Third, chapter thirty-four, intituled "An Act for enabling certain Persons to enclose and embank Part of the River Thames adjoining to Durham Yard, Salisbury Street, Cecil Street, and Beaufort Buildings, in the County of Middlesex," or to take away, alter, affect, or abridge any estate, right, claim, or privilege, franchise, exemption, or immunity, to which he or they is or are now entitled by virtue of such act or otherwise, but the same shall remain in full force and effect as if this act had never been made.

Sect. 177. Nothing in this act contained shall be construed to extend to empower the conservators to authorise or to grant licences

2. *The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Saving rights of the duchy of Cornwall.

Saving the rights of the duchy of Lancaster.

Saving rights of Inner and Middle Temple.

Saving rights of Marquess of Salisbury.

11 G. 3, c. 34.

Saving rights of Regent's Canal Company.



2. *The Conservancy of the Thames.*

20 & 21 Vict. c. cxlvii.

Reservation of rights of trustees of river Lee.

General saving of rights.

for the construction of any work, or to erect any piers or landing places or other work which shall in any way impede, obstruct, or injuriously affect any of the entrances to the ship basin or dock of the company of proprietors of the Regent's Canal at Limehouse, or the regulation of any vessel which shall enter into or go out of the said ship basin or dock, or lie in the river Thames at any of the entrances to the said ship basin or dock, or within one hundred yards from any of those entrances: Provided that the power of the conservators and of the harbour masters of the port of London within such limits shall not by anything contained in this act be prejudiced, lessened, or interfered with; and nothing in this act contained shall take away, prejudice, or affect any of the rights, powers, or privileges of the said company of proprietors of the Regent's Canal, or any of the provisions contained in any of the acts of parliament relating to that company.

Sect. 178. Nothing in this act contained shall extend or be construed to extend to prejudice or derogate from, or in anywise alter, affect, or interfere with, the jurisdiction, power, authority, rights, or privileges which at any time heretofore have been given or granted to or been held, exercised, or enjoyed, or which are now vested in, or may be legally held, exercised, or enjoyed by, the trustees of the river Lee under or by virtue of the several acts of parliament relating to the said river Lee from the town of Hertford to its junction with the river Thames at Blackwall and Limehouse church respectively, or any of them, or otherwise, but all such powers, authorities, rights, and privileges shall and may be held, used, exercised, and enjoyed by the said trustees of the river Lee in as full and ample a manner to all intents and purposes whatsoever as if this act had not been passed.

Sect. 179. None of the powers by this act conferred or anything in this act contained shall extend to take away, alter, or abridge any right, claim, privilege, franchise, exemption, or immunity to which any owner or occupier of any lands, tenements, or hereditaments on the banks of the river, including the banks thereof, or of any aits or islands in the river, are now by law entitled, nor to take away or abridge any legal right of ferry, but the same shall remain and continue in full force and effect as if this act had never been made.

### SCHEDULE referred to by the foregoing Act.

#### SCHEDULE (D.)

##### Form of Conviction.

*Be it remembered, that on the* day of *in the*  
*to wit.* } *year of our Lord* A. B. or [if the offender's name be unknown, here describe his person], *is convicted before me, C. D., [or before us, C. D. and E. F.,] one [or two] of her Majesty's justices of the peace for that* [here describe the substance of the offence, and the time and place when and where committed], *contrary to the Thames Conservancy Act, 1857, and I, C. D., [or we, C. D. and E. F.,] do adjudge the said A. B. [or the person so described] as aforesaid to forfeit and pay for such offence [or for the damage or injury aforesaid, if the offence is to be subject to a fine,] the sum of* [insert the penalty, state if it be to be paid forthwith, and when], *together with the sum of* for costs of this conviction: [or if to be imprisoned, do adjudge the said A. B. to be committed to the [naming the gaol] for the space of [insert the time, and if the commitment be for nonpayment of a penalty, then add] unless the sum of be sooner paid]. *Given under my hand and seal [or our hands and seals], the day and year first above written.*

The 2 & 3 Vict. c. 47 (The Metropolitan Police Act,) contains regulations as to the Thames police and for the prevention of offences on that river. See "*Police*."

2. *The Conservancy of the Thames.*

By 2 & 3 Vict. c. 71, s. 37, all differences, complaints, and disputes which shall happen between any bargemen, lightermen, watermen, ballastmen, (except Trinity ballastmen), coal-whippers, coal-porters, sailors, lumpers, riggers, shipwrights, caulkers, or other labourers who work for hire in or upon the Thames, or the docks, creeks, wharfs, quays, or places adjacent, not being in the city of London or the liberties thereof, and the owners, masters, or commanders of vessels, or their agents, on the said river, or the docks or creeks thereunto adjoining, or the owners, wharfingers, or occupiers of such wharfs or quays, or their agents, or other employers, respecting wages or money due to such labourers for work or loss of time, whether the same persons be employed for any certain time or in any other manner, may be heard by any of the (metropolitan police) magistrates; and every such magistrate is empowered to examine upon oath any such labourer, or any other witness or witnesses, touching any such complaint or dispute, and to make such order for payment of so much wages or money to such labourer as to the magistrate shall seem just, provided that the sum ordered do not exceed 5*l.*, besides costs. See "*Police*."

2 & 3 Vict. c. 71. Further provisions as to offences, &c. on the Thames. Disputes about wages of bargemen, &c.

"The Thames Conservancy Act, 1864," 27 & 28 Vict. c. 113, which amends the laws relating to the river Thames, and provides for the procedure thereunder, is read as one with the Principal Act of 1857, and enacts:

Sect. 76. That for the purposes of the principal act and of this act, and of any byelaw of the conservators made or to be made, the jurisdiction of all justices of the peace for the counties of Essex and Kent respectively, and of the magistrates of the borough of Gravesend in the county of Kent, shall extend over the whole of the waters of the river Thames and the banks and shores thereof, between Broadness Point and the Lower Hope.

Jurisdiction in justices of Kent and Essex over part of river.

Sect. 77. That for the purposes of proceedings under the principal act or under this act, or under any byelaw of the conservators, made or to be made, every offence shall be deemed to have been committed, and every cause of complaint under the principal act or this act, or any byelaw, shall be deemed to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

Where the offences shall be deemed to be.

Sect. 78. That where, under the principal act or under this act, or under any byelaw of the conservators made or to be made, any pecuniary penalty or forfeiture is recovered by the conservators in a summary manner, the same shall be paid to the conservators, and shall form part of the conservancy fund, anything in the act of the session of the second and third years of her Majesty (chapter seventy-one), "for regulating the Police Courts in the Metropolis," notwithstanding.

Penalties, how applied.

The same statute enacts with respect to injuries to the river by throwing ballast, &c.

By sect. 74. That if any person without lawful excuse (the proof whereof shall lie upon him) does any of the following things; namely,

Offences of polluting river.

- (1.) Unloads, throws, or puts, or causes or suffers to fall any gravel or other substance which has been used as ballast, or any stone, earth, mud, ashes, or rubbish, or any refuse from gasworks or other manufactories, into the river Thames or on the shores thereof;
- (2.) Unloads, throws, or puts, or causes or suffers to fall any

2. *The Conservancy of the Thames.*

27 & 28 Vict.  
c. 113.

such gravel or thing as aforesaid into any river, stream, cut, dock, canal, or watercourse communicating with the river Thames at any point within three miles of the river Thames, measured in a direct line therefrom, so that the same shall be carried, or be likely to be carried, by, through, or out of such river, stream, cut, dock, canal, or watercourse into the river Thames;

- (3.) Knowingly puts in any such gravel or other thing as aforesaid in any place where the same is likely to be carried by floods or extraordinary tides into the river Thames;
- (4.) Causes or suffers any washing or other substance produced in making or supplying gas, or any other offensive matter, to flow or pass into the river Thames, or to flow or pass into any river, stream, cut, dock, canal or watercourse aforesaid, within the distance aforesaid, so that the same will be carried, or be likely to be carried, by, through, or out of the same into the river Thames;

he shall for every such offence be liable to a penalty not exceeding 20*l*.

Where any offence against this enactment is committed from or out of a vessel, the master and the owner of the vessel shall be liable to be proceeded against and punished under this enactment, so that the master and the owner of the vessel be not both punished in respect of the same offence.

Any constable, and any person whom a constable shall call to his assistance, may take into custody without warrant any person found committing any offence against this enactment.

Penalty for obstructing bailiff, &c.

Sect. 75. That if any person assaults or resists, or aids or incites any person to assault or resist, any constable, water bailiff, or other officer or person in the execution of his duty or the lawful exercise of any authority under the Principal Act or under this Act, or under any byelaw of the conservators made or to be made, such offender shall for every such offence be liable to a penalty not exceeding 5*l*.

29 & 30 Vict. c. 89.

The "Thames Navigation Act, 1866," 29 & 30 Vict. c. 89, defines the terms "Thames" and the "river," as used therein, to mean the river Thames or rivers Thames and Isis, from the city stone near Staines, to Cricklade, unless a different meaning is expressed or implied, and enacts, by

Sect. 63. That from and after the passing of this act, it shall not be lawful for any person to do any of the following things, namely:—

Offences prohibited.

- (1.) To open into the Thames any sewer, drain, pipe, or channel, with intent or in order thereby to provide for the flow or passage of sewage, or of any other offensive or injurious matter.
- (2.) To cause or, without lawful excuse (the proof whereof shall lie on the person accused,) to suffer any sewage or any matter aforesaid to flow or pass into the Thames down or through any sewer, drain, pipe, or channel, not at the passing of this act used for that purpose.
- (3.) To open into any river, stream, cut, dock, canal, or watercourse, communicating with the Thames at any point within three miles of the Thames, measured in a direct line therefrom, any sewer, drain, pipe, or channel, with intent or in order thereby to provide for the flow or passage of sewage or any matter aforesaid, in such manner that the same will be carried, or be likely to be carried by, through, or out of that river, stream, cut, dock, canal, or watercourse, into the Thames.
- (4.) To cause or, without lawful excuse (the proof whereof shall lie on the person accused,) to suffer any sewage or any matter aforesaid to flow or pass into such river, stream, cut, dock, canal, or watercourse, at any point within the distance afore-

said, down or through any sewer, drain, pipe, or channel, not at the passing of this act used for that purpose, in such manner that the same will be carried or be likely to be carried, by, through or out of that river, stream, cut, dock, canal, or watercourse, into the Thames.

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29 & 30 Vict. c. 89.

If any person does any act or thing in contravention of this enactment, he shall for every such offence be liable on summary conviction, to a penalty not exceeding 100*l.*, and to a further penalty not exceeding 50*l.* for every day during which the offence is continued after the day on which the first penalty is incurred.

Penalty for same.

Sect. 64. Whenever any sewage or any other offensive or injurious matter is caused or suffered to flow or pass into the Thames, or is caused or suffered to flow or pass into any river, stream, cut, dock, canal, or watercourse communicating with the Thames, at any point within three miles of the Thames, measured in a direct line therefrom, in such manner that the same is carried, or is likely to be carried, into the Thames, then and in every such case, whether any such sewage or other matter aforesaid had or had not been so caused or suffered to flow or pass before the passing of this act, the conservators, within a reasonable time after knowledge of the fact, shall, and they are hereby required to give notice in writing, under their common seal, to the person or body causing or suffering the same so to flow or pass, to the effect that they require him or them to discontinue the flow or passage thereof as aforesaid, within a time to be specified in the notice, not being in any case less than twelve months or more than three years; provided that the conservators may, if they think fit, at any time and from time to time extend the time specified in the notice by another notice in writing under their common seal; but nothing in this section shall authorise the conservators, until the expiration of six months after the passing of this act, to give to the owner or occupier of any mill or work a notice requiring him to discontinue the flow or passage as aforesaid of any liquid matter produced or used in the manufacture of paper or in any process incidental thereto.

Discontinuance of sewage flow into rivers.

Sect. 65. Subject to the provisions of this act, any person to whom any such notice is given by the conservators shall, notwithstanding anything in any other act, within the time allowed by the notice, discontinue the flow or passage of the sewage or other offensive or injurious matter to which the notice refers, and if any person fails to do so he shall be guilty of a misdemeanor, and shall be liable, on summary conviction thereof before two or more justices, or on conviction thereof on indictment, to a penalty not exceeding 100*l.*, and to a further penalty not exceeding 50*l.* for every day during which the offence is continued after the day on which the first penalty is incurred.

Penalty after notice given, if not discontinued.

Sect. 66. Provided always, that if any person to whom any such notice is given thinks himself aggrieved by reason of the time allowed, either by the original or by any subsequent notice, not being sufficient to enable him to discontinue the flow or passage of the sewage, or other offensive or injurious matter to which the notice refers, he may, not later than one month before the expiration of the time allowed, by writing delivered to the secretary of the conservators, demand an extension of such time; and in case the conservators refuse to comply with such demand, the question of such extension shall be referred to an arbitrator appointed by agreement, or, failing agreement, by the board of trade, on the application of either party, and the decision of the arbitrator shall be final, and the costs of the reference shall be in the discretion of the arbitrator.

Extension of time to discontinue.

Sect. 67. Notwithstanding anything in the Thames Conservancy Act, 1857 (s. 160), any proceeding in pursuance of this act in respect of such a misdemeanor as aforesaid, may be removed by certiorari into her Majesty's court of Queen's Bench at Westminster; and not-

Certiorari and appeal.

2. *The Conservancy of the Thames.*

29 & 30 Vict. c. 89.

Who may proceed for offences.

withstanding anything in the same act (sect. 162), the court of quarter sessions shall hear and determine with a jury any appeal brought against any adjudication or determination in respect of such a misdemeanor as aforesaid.

Sect. 68. It shall not be competent for any person, other than the conservators, their officers, attorneys, solicitors, or agents, to institute or carry on any proceeding or prosecution under the provisions of this act relative to the flow or passage of sewage or of any matter aforesaid.

*Theatres See Players & Playhouses*

## Threatening Letters.

HEREIN of—

I. *Threats to Murder, and to burn or destroy Property*, 960.

II. *Threats and Menaces to extort Money, &c.*, 962.

III. *Forms*, 964.

### I. Threats to Murder, and to burn or destroy Property.

[24 & 25 Vict. cc. 100 and 97.]

Sending threatening letters to murder.

By 24 & 25 Vict. c. 100, s. 16, it is enacted, that whosoever shall maliciously send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing, threatening to *kill* or *murder* any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen years, with or without whipping.

Punishment for.

Sending letters threatening to burn or destroy houses, &c., or ships, &c.

By 24 & 25 Vict. c. 97, s. 50, it is enacted, that whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing, threatening to burn or destroy any house, barn, or other building, or any rick, or stack of grain, hay, or straw, or other agricultural produce, or any grain, hay, or straw, or other agricultural produce in or under any building, or any ship or vessel, or to kill, maim, or wound any cattle, shall be guilty of felony, and being convicted thereof, shall be liable at the discretion of the court to the same punishments as in the case of threats by letter, &c., to kill or murder, 24 & 25 Vict. c. 100, s. 16, *ante*.

Not triable at sessions

By 5 & 6 Vict. c. 38, s. 1, these offences cannot be tried at the Quarter Sessions. (See "*Sessions*." )

Evidence of prior and subsequent letters between the prisoner and the party threatened may be received, to explain the intention of that on which the indictment is framed. (2 *Leach*, 749.)

A prisoner was indicted for sending a threatening letter; the only evidence against him was his own statement that he never should have written it but for W. G.—It was *held*, not sufficient. (*R. v. Howe*, 7 C. & P. 268.)

What a sending or delivery.

*Send, deliver, or utter.*—Dropping a letter in a man's way, that he may pick it up, is a sending it to him. And it was also held a sending, though the party saw the prisoner drop the letter, if the prisoner did not think the party knew him, and intended he should not. (*R. v. Wagstaff, R. & R. C. C.* 398.)

In *Lloyd's case* (2 *East's P. C.* 1122), the letter was dropped in a vestry-room, frequented by the prosecutor every Sunday morning, where it was picked up by the sexton, and given to the prosecutor; and Mr. Justice Yates had no doubt but this was a sending, within the act.

So, in *Jepson and Springett's case* (*Id.*, *infra.*) the letter was thrown into the prosecutor's yard, from whence it was taken up by the prosecutor's servant, and delivered to him.

So, where the prosecutor, having received such a letter, traced it to a woman who was in the habit of going errands for the prisoners in Newgate, and she proved that she received it from the defendant, then a prisoner in Newgate, to put in the post office, and the servant of the post office proved that the letter in question was brought to the office by the last witness, and forwarded in the regular course; this was holden sufficient evidence, not only of the sending by the defendant, but that he also knew its contents. (*R. v. Girdwood*, 2 *East's P. C.* 1120; 1 *Leach*, 142.)

*Threatening to Burn Houses, &c.*—A conviction on the now repealed act, 27 Geo. 2, c. 15, for sending a letter to the prosecutor, threatening "to set fire to his mill, and likewise to do all the public injury they were able to him in all his farm and seteres," was held wrong, he not then having any mill to which the threat of burning would apply (having parted with it three years before), and the threat as to the farm, &c. not necessarily implying a burning. *John Jepson and George Springett* were indicted upon the act now repealed, 27 Geo. 2, c. 15, for sending to the prosecutor, Mr. Woodgate, a letter according to the following effect:—

Nature of the threat.

March 3rd, 1798.

Mr. Woodgate.—Sir, I am very sorry to acquaint you that we are determined to set your mill on fire, and likewise to do all the public injury that we are able to do you in all your farms and seteres which you are in possession of, without you on next day release that Ann Wood, which you put in confinement. Sir, we mention in a few lines, and we hope, if you have any regard for your wife and family, you will take our meaning without anything further; and if you do not, we will persist as far as we possibly can, so you may lay your hand at your heart, and strive your uttermost ruin. I shall not mention nothing more to you until such time as you find the few lines a fact. With our respect. So no more at this time from me.

R. R.

It was proved that the letter was in the handwriting of *Jepson*, and that it was thrown by the other prisoner into Mr. Woodgate's yard, from whence it was taken by a servant of Mr. Woodgate, and delivered to him. Mr. Woodgate swore that he had a share in a mill three years before this letter was written, but had no mill at that time; that he held a farm when the letter was written and came to his hands, and still holds it, with several buildings upon it. It was objected that this was not such a letter as comprehended the offence in the act of parliament, 27 Geo. 2, c. 15. At a conference of the judges after conviction, in Michaelmas Term, 1798, (absent *Eyre, J.*,) it was agreed that, the prosecutor having no such property at the time, as the mill which was threatened to be burnt, that part of the letter must be laid out of the question; but as to the rest of it, Lord Kenyon, C. J., and Buller, J., were of opinion that the letter must be understood as also importing a threat to burn the prosecutor's farm-house and buildings; but the other judges not thinking that a necessary construction, the conviction was holden wrong, and a pardon recommended. (2 *East, P. C.* 1115.)

But it was ruled that a letter accusing the prosecutor of having taken away the life of a friend of the writer's who was come to revenge him, was evidence to go to the jury, upon a charge of sending a letter

1. *Threats to Murder, and to burn or destroy Property.* threatening to kill and murder the prosecutor, and that whether a letter amount to a threat to kill or murder, is a fact to be determined by the jury. (*R. v. Girdwood*, 2 *East's P. C.* 1121. And see, *R. v. Tyler*, 1 *Moody, C. C.* 428; *R. v. Tucker*, *post*, p. 964; *R. v. Boucher*, 4 *C. & P.* 563.)

Indictment for. *Indictment.*]—The indictment must set forth the threatening letter, in order that the court may judge whether it falls within the purview of the respective statutes. (*Lloyd's case*, 1787; 2 *East's P. C.* 1123. See further "*Indictment.*")

Venue. The party may be tried in the county where the letter was delivered to the prosecutor, though written by the prisoner, and by him sent, in another county. (*Girdwood's case*, 2 *East's P. C.* 1120.)

And the offence of sending a threatening letter may be laid in the county where it is delivered by the post. An indictment on the 30 Geo. 2, against two defendants for sending a letter to the prosecutor, threatening to accuse him of an unnatural crime, with intent to extort money from him, laid the offence in Middlesex, but the letter was dated from Maidstone in Kent. The sending it was proved by the defendant's confession. It was objected, that as the letter was dated and sent by the post from Maidstone, the fact of the sending, which constituted the offence, was committed in Kent, and the indictment would not lie in Middlesex. But Lord *Mansfield*, C. J., held that, as it was directed to the prosecutor in Middlesex, where it was delivered, that was a sending in Middlesex; for the whole was to be considered as the act of the defendant, to the time of the delivery in that county. (*R. v. Esser*, 2 *East's P. C.* 1125; *R. v. Burdett*, *ante*, "*Libel*;" "*Indictment*;" 7 *Geo. 4*, c. 64, s. 12.)

## II. Threats and Menaces to extort Money.

[24 & 25 Vict. c. 96.]

As to menaces with intent to steal, see "*Robbery*," "*Assault*."

Letter demanding money with menaces. By 24 & 25 Vict. c. 96, s. 44, whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing demanding of any person with menaces and without any reasonable or probable cause any property, chattel, money, valuable security, or other valuable thing, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years with or without whipping.

Letter threatening to accuse of crime with intent to extort. Sect. 46. Whosoever shall send, deliver, or utter, or directly, or indirectly cause to be received, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death, or penal servitude for not less than seven years, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime as hereinafter defined, with a view or intention in any of such cases to extort or gain by means of such letter or writing any property, chattel, money, valuable security, or other valuable thing, from any person, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court (to the like punishment as in sect. 44, *ante*), and the abominable crime of buggery, committed

either with mankind or with beast, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the same abominable crime, and every solicitation, persuasion, promise, or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this act.

By the 5 & 6 Vict. c. 38, s. 1, these offences are not triable at the sessions.

2. *Threats and menaces to extort Money.*

"Infamous crime," defined.

Offence not triable at sessions.

The question is, whether an application has been made for money, accompanied by the holding out of a threat that mischief would happen to the party addressed if the application was not complied with; but if the threatening demand be of such a nature as is calculated to affect a man of a reasonably sound state of mind, the degree of nerves possessed by the individual is not a subject of inquiry. (*R. v. Smith*, 19 L. J. 80, M. C.; 14 Jur. 92.) In that case, the prisoner wrote to the prosecutors, who were bankers, as follows:—"Gentlemen, you say that B. O. N. will accede to the terms proposed, and send part of the money to any place that may be named, &c. I must have sufficient means at my disposal, or all will be lost. I am fully assured that 20,000*l.* will not cover the horrid catastrophe, which is not only to stop your bank for a time, but perhaps for ever, as the books would be destroyed. The match, the most dreadful last resource, has been contemplated by the cracksman or captain of this most horrid gang, which I fervently pray to be relieved from." The letter then, after pointing out a certain pipe, behind which the money was to be deposited, proceeded, "if therefore you will send a man you can confide in, and lodge under that pipe 250 sovereigns, unseen by mortal eye, I swear by Almighty God, most solemnly, that the evil to which I have alluded, shall be averted," &c. "Let the money be lodged to-morrow, Saturday morning, by half-past 11, but not one moment sooner, and all shall be well with you; but if I am at all deceived, in any possible way, all must fall upon yourselves;" and the Court of Criminal Appeal held that it was a letter demanding money with menaces, within 7 & 8 Geo. 4, c. 29.

Where the letter contained a request only, but intimated that, if it were not complied with, the writer would publish a certain libel then in his possession, accusing the prosecutor of murder, this was holden to amount to a demand. (*R. v. Robinson*, 2 Leach, 749; 2 East's P. C. 1110.) But it is not necessary, under this branch of the statute, that the letter should contain a threat: if it appear to demand money, &c., in the strict sense of the word, it is sufficient to bring it within the act. A mere request, however, such as asking charity, or the like, without imposing any conditions, would not come within the meaning of the word "demand" in the statute. (*Per Buller, J.*, S. C.)

Where an anonymous letter stated that the writer had overheard certain persons agree together to do an injury to the person and property of the prosecutor, to whom the letter was sent, and that, if thirty sovereigns were laid in a particular place, the writer would give such information as would frustrate the attempt, it was held, that this was not a threatening letter within the 7 & 8 Geo. 4, c. 29, s. 8; although it appeared that the letter was a mere device to defraud the prosecutor of thirty sovereigns. (*R. v. Pickford*, 4 C. & P. 227.)

Whether the letter amount to a threat to accuse the prosecutor of the offence mentioned, is a fact to be determined by the jury. (See *R. v. Girdwood*, 2 East's P. C. 1121.)

If the terms of the letter are doubtful as to the exact accusations the prisoner meant to threaten, his declarations subsequently made, on being asked what he meant to impute, are evidence to explain the meaning of the letter. (*R. v. Tucker*, cor. Twelve Just., 1826 (MS.); *Car. C. L.*; *R. & M. C. C.* 134.)



2. *Threats and menaces to extort Money.*

Indictment for.

In *Edward Major's* case, the indictment charged that the prisoner, *intending to extort and gain money from one Augustine Rayner, unlawfully, knowingly, and designedly, sent to the said A. R. a certain letter in writing, &c., thereby threatening, &c.:* and then set forth the letter, as follows: "Sir, I received a letter respecting the bill which I gave you when we parted; and, as you know, I have it not in my power to pay it, and if I had, it is an unjust demand. I have only to observe that if you do not immediately return it to me as an acknowledgment for the obscene offence of sodomy attempted upon me, &c., I am determined to prosecute you to the utmost rigour of the law, &c. (Signed) *E. Major*, (and dated) June 1st, 1796:" *with a view and intent to extort and gain money from the said A. R.; against the form of the statute, &c.* The judges, on reference to them after conviction, in *Michaelmas term, 1796*, held the conviction wrong; for the letter was not sent to extort money, but to procure delivery up of the bill. (*R. v. Major, 2 East's P. C. 1118.*)

An indictment need not specify the infamous crime of which the prosecutor was threatened to be accused; for the specific crime the prisoner threatened to charge might intentionally be left in doubt. (*R. v. Tucker, R. & M. C. C. 134.*)

An indictment on the statute for demanding money must show by whom it was demanded: and an indictment on the statute for threatening to accuse must show who was threatened. (*R. v. Dunkley, R. & M. C. C. R. 90.*)

It seems questionable whether a count framed on a letter *demanding money* will be supported by evidence that the letter was written *with a view to extort money*. (*R. & M. C. C. 38; 2 East's P. C. 1110; Leach, C. C. 749, 4th ed., S. C.*)

See further, as to the indictment and venue, *ante*, p. 962.

### III. Forms.

Commitment on 24 & 25 Vict. c. 100, s. 16, for sending a letter, threatening to murder.

———. (The county wherein the commitment is made.) *J. P. esquire, one of her Majesty's justices of the peace for the said county to the constable of* \_\_\_\_\_, *in the said county, and to the keeper of the common gaol at* \_\_\_\_\_, *in the said county.*

*These are to command you the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of C. D., charged this day before me the said justice, on the oath of A. B. of \_\_\_\_\_, and others, for that he the said C. D., on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, at the parish of \_\_\_\_\_, in the said county, maliciously and feloniously, did send [or "deliver," or "utter"] to A. B. a certain letter and writing, knowing the contents thereof, thereby and therein threatening to kill and murder the said A. B.; against the form of the statute in such case made and provided. And you the said keeper are hereby required to receive the said C. D. into your custody in the same [common gaol], and him there safely to keep until he shall be thence delivered by due course of law. Herein fail you not. Given under my hand and seal the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord (a).*

*J. P.*

Indictment for a like offence.

——— (venue)—*The jurors for our lady the Queen, upon their oath present, that C. D., late of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, labourer, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of our lady the now Queen Victoria, at the parish aforesaid, in the county aforesaid, maliciously*

(a) The like form will apply to the offences relating to threatening letters under 24 & 25 Vict. c. 97, s. 50, *mutatis mutandis*.

and feloniously, did send [or "deliver" or "utter"] ["and cause to be received, or indirectly cause to be received,"] a certain letter [or "writing"] knowing the contents thereof to [or by] A. B., thereby and therein then threatening to kill and murder the said A. B., and which said letter and writing was and is as follows; that is to say, "Sir," &c. [here set out the letter verbatim]; against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity. [Add other counts for uttering the letter] (a).

## 3. Forms.

— } To E. F., the constable of \_\_\_\_\_, and to all other peace officers  
 — } in the said county, and others whom this may concern. Warrant to apprehend, on 24 & 25 Vict. c. 96, s. 44, for sending a threatening letter, demanding money.

Forasmuch as A. B., of \_\_\_\_\_ in the said county, gentleman, hath this day made information and complaint upon oath before me, J. P., esq., one of her Majesty's justices of the peace, in and for the said county, that he did on, &c., at &c., receive a certain letter [or "writing"] from some person or persons unknown to the said A. B., directed to him, the said A. B., demanding with menaces and without reasonable cause, of the said A. B. money, property, or valuable security [stating the terms of the letter, as the case may be]; and that he, the said A. B., hath just cause to suspect, and doth suspect, that the said letter was sent [or "delivered," or "indirectly caused to be received by him"] by one C. D., of, &c., the said C. D. knowing the contents of the said letter: These are, therefore, to command you, in her Majesty's name, forthwith to apprehend and bring before me, or some other of her Majesty's justices of the peace, in and for the said county, the body of the said C. D., to answer unto the said complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal, the \_\_\_\_\_ day of, \_\_\_\_\_ &c.

J. P. (L. S.)

Commencement as usual, as ante, p. 964.]—on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, at the parish of \_\_\_\_\_, in the said county, feloniously did send [or "deliver" or "utter"] to [or, "indirectly cause to be received by"] A. B. a certain letter [or "writing,"] knowing the contents thereof, demanding money [or, "a certain chattel, to wit, \_\_\_\_\_," or, "a certain valuable security, to wit, \_\_\_\_\_"] of and from the said A. B., with menaces, and without any reasonable or probable cause, and which said letter was and is as follows [here set it forth verbatim]; against the form of the statute in that case made and provided. And you, the said keeper, &c. [as usual to the end], ante, p. 964. Commitment for like offence.

—(venue)—The jurors for our lady the Queen upon their oath present, that C. D., late of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, labourer, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of our lady the now Queen Victoria, at the parish aforesaid, in the county aforesaid, feloniously did send [or "deliver" or "utter" or "indirectly cause to be received"] a certain letter [or "writing,"] knowing the contents thereof, to [or by] one A. B., thereby and therein demanding of the said A. B. money [or "a certain chattel or property, to wit, \_\_\_\_\_," or "a certain valuable security, to wit, a certain \_\_\_\_\_,"] the property of the said A. B., with menaces, and without any reasonable or probable cause; and which said letter was and is as follows: that is to say [set out the letter verbatim]; against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity. [Add other counts, as the case may suggest.] Indictment for a like offence.

Commencement as usual, as ante, p. 964.]—on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, at the parish of \_\_\_\_\_, in the said county, feloniously did send [or, "deliver," or "utter"] [or, "indirectly cause to be received"] a certain letter [or "writing,"] knowing the contents thereof, to [or by] A. B., threatening to accuse [or "accusing"] him, the said A. B., of having committed \_\_\_\_\_, &c. Commitment for sending a letter, threatening to accuse a man of a crime, with intent to extort money, &c.

3. *Forms.*

*murder* ["any crime punishable by law with death, or penal servitude for not less than seven years,"] [or, "made an assault with intent to commit a rape," or "attempted and endeavoured to commit a rape" on C. D., or, "attempted and endeavoured to commit the abominable crime of buggery upon C. D., or with a beast,"] with a view and intent, by means of the said letter and writing, to extort and gain money ["chattel, money, or valuable security"] from the said A. B.; against the form of the statute in that case made and provided. And you, the said keeper; &c. [as usual to the end, p. 964.]

Indictment for a like offence.

—(venue)—*the jurors for our lady the Queen upon their oath present, that C. D., late of the parish of* \_\_\_\_\_ *, in the county of* \_\_\_\_\_ *, labourer, on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *, in the year of our Lord 186* \_\_\_\_\_ *, at the parish aforesaid, in the county aforesaid, feloniously did send [or "deliver," or "utter"] [or "indirectly cause to be received"] a certain letter [or "writing,"] knowing the contents thereof, to [or by] A. B., accusing [or "threatening to accuse"] the said A. B. of a certain crime, to wit, the crime of having ["attempted and endeavoured to commit the abominable crime of sodomy with the said C. D." ["any crime punishable by law with death, or penal servitude for not less than seven years, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime," as mentioned in sect. 46 of the 24 & 25 Vict. c. 96], with a view and intent, by means of the said letter [or writing], then feloniously to extort and gain from the said A. B. money [or "a certain chattel, to wit, \_\_\_\_\_," or "a certain valuable security, to wit, \_\_\_\_\_"], and which said letter [or "writing"] was and is as follows [here set out the letter verbatim]; against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity. [Add other counts as the case may suggest.]*

## Time (a).

Statement of.

AS to the statement, &c. of, in an indictment, see "*Indictment*;" in a conviction, see "*Conviction*;" as to proof of, see "*Evidence*."

New style.

As to the establishing of the new style, by 24 Geo. 2, c. 23, see "*Almanack*."

Of what times the law takes notice.

The law takes notice of the commencement and course of the year, and all times which depend upon the calendar. (*Com. Dig. Temps*, B. 1.) It takes notice of moveable and immoveable feasts (*id.* B. 2), *ante*, "*Almanack*."

By 24 Geo. 2, c. 23, the calendar is corrected, and new style first established. The year 1752 was enacted thereby to begin on the 1st of January, 1752, and the day after the 2d of September, 1752, was to be accounted the 14th of September; and see 25 Geo. 2, c. 30, and title "*Almanack*."

Time of memory.

Time of memory has been long ago ascertained by the law to commence from the beginning of the reign of Rich. I. viz. 6th of July, A.D. 1189, and any custom may be destroyed by evidence of non-existence in any part of the long period from that time to the present. (2 *Inst.* 238, 239; 2 *Bla. Com.* 30.)

This rule was adopted when by stat. West. 1 (3 Edw. 1, c. 39), the reign of Richard I. was made the time of limitation in a writ of right; but by 32 Hen. 8, c. 2, this period in a writ of right has been since reduced to sixty years. (*Ibid.*) See now the Prescription Act, 2 & 3 Will. 4, c. 71, for shortening the time of prescription in certain cases; and see title "*Statutes*."

(a) See, as to time in general, 2 *Bla. Com.* 140, by Chitty; *Com. Dig. Temps*; *Vin. Ab. Time*.

The *year*, according to its ordinary import, consists of three hundred and sixty-five days; there are six hours, within a few minutes, over in each year, which, every fourth year, makes another day, viz. three hundred and sixty-six, and being the 29th of February, constitute the bissextile or leap year. (*Co. Lit.* 135; 2 *Roll.* 521, l. 35; *Com. Dig. Ann.* (A.); 24 *Geo.* 2, c. 23, s. 2; 2 *Bla. Com.* 140, notes by Chitty.)

Where a statute speaks of a year, it shall be computed by the whole twelve months, according to the calendar, and not by a lunar month. (*Bishop of Peterborough v. Catesby*, *Cro. Jac.* 166.) Formerly if a statute directed a prosecution to be within twelve months, it was intended to be before the expiration of twelve lunar months. (*R. v. Peckham*, *Carth.* 407.) But now see *ante*, 13 & 14 *Vict.* ch. 21, title "Statutes;" month to mean calendar month when used in a statute.

A twelvemonth in the singular number includes all the year (6 *Rep.* 62. And see *Crooke v. M'Tavish*, 1 *Bing.* 307; 8 *Moore*, 265, s. 6.)

So the 43 *Geo.* 3, c. 84, now repealed, prohibited under a penalty, a spiritual person from absenting himself from his benefice for more than a certain time in any one year, which meant year next before the time when the action is brought for the penalty. (2 *M. & Sel.* 534.)

The term "*year*" may sometimes be construed in a different sense than that which it bears according to its ordinary import. In *Dugdale's Chron. Jur. Ref.* p. 2, it is said that the year is either astronomical, ecclesiastical, or regnal, beginning on the 1st of January, or 25th of March, or the day of the king's accession; and see *Bract.* 359. And the word "*year*" is frequently used to denote different periods of time—as in a charter it may be sometimes construed to mean a "*mayor's year*" or "*year of office*," and not a calendar year. (See *Rea v. Swyer*, 10 *B. & Cr.* 486.)

So a hiring from Whitsuntide to Whitsuntide has been held to be a hiring for a year, though for 339 days\* only. (*R. v. Newstead*, *Burr.* S. C. 669, recognized in *R. v. Standon Massey*, 6 *Coke*, 62.)

Half a year consists of one hundred and eighty-two days, for there shall be no regard to a part or a fraction of a day. (*Co. Lit.* 135 b; *Bishop of Peterborough v. Catesby*, *Cro. Jac.* 166.) The time to collate within six months shall be reckoned half a year, or one hundred and eighty-two days, and not lunar months. (*Bishop of Peterborough v. Catesby*, *Cro. Jac.* 166; 6 *Rep.* 61; 2 *Bla. Com.* 140, notes by Chitty.)

A quarter of a year consists but of ninety-one days, for the law does not regard the six hours afterwards. (*Co. Lit.* 135 b; 2 *Roll.* 521, l. 40; *Com. Dig. Ann.* (A.))

But half-years and quarters are usually divided according to certain feasts or holidays, rather than by a precise division of days, as Lady Day, Midsummer Day, Michaelmas Day, or Christmas, or old Lady Day (sixth of April), or old Michaelmas Day (the eleventh of October). In these cases such division of the year by the parties is regarded by the law, and, therefore, though half a year's notice to quit is necessary to determine a tenancy from year to year, yet a notice served on the twenty-ninth of September, to quit on the twenty-fifth of March, being half a year's notice according to the above division, is good, though there be less than one hundred and eighty-two, viz. one hundred and seventy-eight days. (*Doe d. Matthewson v. Wrightman*, 4 *Esp. R.* 5; *Doe d. Harrop v. Green*, 198; *Howard v. Wemsley*, 6 *Esp.* 53; *Selw. N. P.* title *Ejectment*; *Adams on Eject.* 123; 2 *Bla. Com.* 149, notes by Chitty.)

A month is solar, or computed, according to the calendar, which contains thirty or thirty-one days; or lunar, which consists of twenty-eight days. (*Co. Lit.* 135 b.)

In temporal matters, it is usually construed to mean lunar: in ecclesiastical, solar or calendar, because, in each of these matters, a

different mode of computation prevails: the term, therefore, is taken in that sense which is conformable to the subject-matter to which it is applied; (2 *Roll. Ab.* 521, 51; *Talbot v. Linfield*, 1 *Bla. R.* 450; 3 *Burr.* 1455, *S. C.*; *Lang v. Gale*, 1 *M. & Sel.* 117; *Crooke v. M'Tavish*, 1 *Bing. R.* 307; 8 *Moore*, 265; *Com. Dig. Ann. (B.)*;) and, therefore, when a deed states *calendar* months, and, in pleading, the word *calendar* be omitted, it is not necessarily a variance, (*Cockell v. Gray*, 3 *Brod. & B.* 186; 6 *Moore*, 483, *S. C.*; 2 *Bla. Com.* 140, notes by *Chitty*.)

When a deed speaks of a month, it shall be intended a lunar month, unless it can be collected from the context that it was intended to be *calendar*. (*Lang v. Gale*, 1 *M. & Sel.* 111; *Com. Dig. Ann. (B.)*; *Bishop of Peterborough v. Catesby*, *Cro. Jac.* 167; *Barksdale v. Morgan*, 4 *Mod.* 185.) So, in all other contracts, (*Barksdale v. Morgan*, 4 *Mod.* 185; *Jocelyn v. Hawkins*, 1 *Str.* 446; *Reg. v. Inhabitants of Chawton*, 10 *Law J. N. C.* 55; 2 *B. H. T.* 1841,) unless it be proved that the general understanding in that department of trade is, that bargains of that nature are according to *calendar* months. (*Titus v. Lady Preston*, 1 *Str.* 652; *Lang v. Gale*, 1 *M. & Sel.* 111.) And the custom of trade, as in case of bills of exchange and promissory notes, has established that a month named in those contracts shall be deemed *calendar*. (*Cockell v. Gray*, 3 *B. & B.* 187; 6 *Moore*, 483.)

Where parties contract that the purchase of lands shall be completed within so many months, *calendar* and not *lunar* months are intended. (*Hipwell v. Knight*, 1 *Y. & Col.* 401.)

In all legal proceedings, as in commitments, pleadings, &c., a month means four weeks. (*Tullet v. Linfield*, 3 *Burr.* 1455; 1 *Bla. R.* 450; *R. v. Adderley*, *Dougl.* 463, 464.)

5 & 6 Vict. c. 97.

By 5 & 6 Vict. c. 97, s. 4, reciting that "it is expedient that the law should be uniform with respect to notice of action in all cases where such notice of action is required;" it is enacted, "that from and after the passing of this act, [10 August, 1842,] in all cases where notice of action is required, such notice shall be given one *calendar* month at least before any action shall be commenced; and such notice of action shall be sufficient, any act or acts to the contrary thereof notwithstanding."

A day.

A *day* is natural, which consists of twenty-four hours; or artificial, which contains the time from the rising of the sun to the setting. (*Co. Lit.* 135, *a.*)

A day is usually intended of a natural day: as, in an indictment for burglary, we say in the night of the same day. (*Co. Lit.* 135, *u.*; 2 *Inst.* 318.)

When day excluded or included.

The question whether, in computing time from an act or event, the day is to be included or excluded, came under the consideration of Sir *William Grant*, in *Lester v. Garland* (15 *Ves.* 247). All the authorities on the subject are there reviewed by him, who takes this distinction, that where the act done, from which the computation is made, is one to which the party against whom the time runs is privy, the day of the act done may reasonably be included; but where it is one to which he is a stranger, it ought to be excluded. He points out this as a distinction which will reconcile many of the cases. He observes, that in the case of a notice of action to be brought, the party necessarily knows the time at which he is served with the notice, and may immediately begin to consider of the propriety of preventing the action, by tendering amends. (See per *Bayley, J.*, *Hardy v. Ryle*, 9 *B. & Cr.* 603; 4 *Man. & R.* 295. See also *Godson v. Sanctuary*, 1 *Nev. & M.* 52; 4 *B. & Ad.* 255; *Collins v. Rose*, 5 *M. & W.* 194.)

Where a certain number of days' notice of an intention to do an act is required, the day of the service of the notice is excluded from the computation, and that on which the act is to be done is included,—

unless there be some special provision requiring a different mode of computation. (*Rea v. Cumberland (Justices)*, 4 Nev. & M. 378; 1 Har. & Woll. 16.) Therefore, notice to magistrates of an intention to apply on the twenty-fifth day of the month, for a certiorari to remove an order made by them for the allowance of accounts of surveyors of highways, served upon the twentieth of the same month, is not a sufficient notice within 13 Geo. 2, c. 18, s. 5, requiring six days' notice to be given. (*Id.*)

When a month's notice of action is necessary, the day on which the notice is given and on which the action is commenced are excluded. (*Young v. Higgon*, 6 M. & W. 49; 8 Dowl. 212. See ante, "Justices.")

In *Pellw v. Inhabitants of Wonford*, (9 B. & C. 134; 4 Man. & R. 130,) an action was brought to recover damages for an injury done to premises maliciously set on fire. The 9 Geo. 1, c. 22, required notice to be given "within two days after such damage or injury done." The fire happened on Saturday, and the notice was given on the Monday following, and the Court of King's Bench, acting upon the rule laid down by Sir William Grant (*supra*), held that the day of the happening of the event, from which the computation of time was to run, was to be excluded.

And a very reasonable rule was there laid down by Lord Tenterden, C. J., which is a good test to apply to most cases, viz., by reducing the time to one day, in which case the party would clearly be entitled to the whole of the next day after the injury was done, otherwise he might have no time at all in which to give notice. Approved in *Webb v. Fairman*, 3 M. & W. 477.

However, in a case in equity, the Master of the Rolls, after considering many of the decisions, said, upon the first part of this rule, that whatever *dicta* there may be that, when a thing is to be done after the doing of an act, the day of its happening must be included, it is clear the actual decision cannot be brought under any such general rule; and he inclined for excluding the first day in all cases, and ruled, that where a security was to be given within six months after a testator's death, the day of the death was to be excluded. (15 Ves. 248.)

Under 3 Geo. 4, c. 39, s. 1, which requires that every warrant of attorney to confess judgment shall be filed within twenty-one days after the execution, a warrant executed on the ninth day of the month may be filed on the 30th. (*Williams v. Burgess*, 9 Dowl. P. C. 544; 4 P. & D. 443.)

In computing the time of credit on a mercantile contract, the day on which the contract was made is to be excluded from the reckoning. (*Webb v. Fairman*, 6 Dowl. P. C. 549; 3 M. & W. 473.) Thus, if a party purchase goods, to be paid for in two calendar months, the credit does not expire till the end of the corresponding day of the second month. (*Id.*)

The month required to elapse after the delivery of his bill, before an attorney can commence an action, under 2 Geo. 2, c. 23, s. 23, must consist of twenty-eight days, exclusively of both the day of delivering the bill and of commencing the action. (*Blunt v. Heslop*, 3 Nev. & Per. 553.)

The seven days which a party convicted under 11 Geo. 4 & 1 Will. 4, c. 64, and 4 & 5 Will. 4, c. 85 (Beer House Acts), has for paying a penalty imposed on him before a distress warrant can issue, are to be reckoned one day exclusively and the other inclusively; and if the warrant is not issued too soon it is not bad because it was dated too soon. (*Newman v. Hardwicke*, 3 Nev. & Per. 368.)

It may now be taken as a general rule in the computation of time in matters of practice, that one day is to be reckoned exclusively and the other inclusively, and this independently of the rule of all the

In matters of practice one day is included and the other excluded.

Courts at Westminster, of Hilary Term, 2 Will. 4, R. viii. (*Rex v. Goodenough*, 2 A. & E. 463; *Buxton v. Spires*, 1 T. & Gr. 74.)

Thus the six days' notice of applying for a certiorari to remove an order of justices, must be reckoned exclusively of one day, and inclusively of the rest. (*Rex v. Goodenough*, *supra*; *Rex v. Cumberland Justices*, *ante*, p. 969.)

The 13 Geo. 2, c. 18, s. 5, directs, that no order of justices shall be removed, unless the certiorari be applied for within six months after the order is made. Where an act directs justices to make an order, and that it should be subsequently confirmed by an order of sessions, the period of six months is to be calculated from the date of the latter order. (*Rex v. Middlesex (Justices)*, 1 Nev. & Per. 92.)

A statute requiring "ten days" notice of appeal, will be satisfied by giving such notice ten days before the sessions, one day inclusive and the other exclusive. (*Rex v. Justices of West Riding*, 4 B. & Ad. 685; 1 N. & M. 426.)

"Clear days."

But where an act required ten "clear days" notice of the intention to appeal, it was held that the ten days are to be taken exclusively both of the day of serving the notice and the day of holding the sessions. (*Rex v. Justices of Herefordshire*, 3 B. & Al. 581. See *further*, "Appeal.")

"Days at the least."

Where an act is required by a statute to be done so many days "at least" before a given event, the time must be reckoned excluding both the day of the act and that of the event. (*Reg. v. Shropshire (Justices)*, 8 A. & E. 173; 3 N. & P. 286.) The 4 & 5 Will. 4, c. 51, requires that a summons to appear before justices, and answer a summons under the statute, shall be served ten days "at least" before the hearing. A party was summoned on the twentieth day of the month to appear on the thirtieth, and was convicted for default of appearance:—it was held, that the justices had no jurisdiction, as the ten days must be reckoned exclusive of the day of serving the summons and that of convicting the defendant. (*Mitchell v. Foster*, 4 Per. & D. 150; 9 Dowl. P. C. 527; decided on the 4 & 5 Will. 4, c. 51; and see *Exp. Prangley*, 4 A. & E. 781; and *R. v. Shropshire Justices*, 8 A. & E. 173.)

"Until."

Where time is given for the performance of an act "until" a particular day, the time is to be construed as inclusive of that day. (*Kerr v. Jeston*, 1 Dowl. N. S. 538; *Dakins v. Wagner*, 3 Dowl. 535.)

Sunday.

Where notice in writing of appeal within fourteen days, was required, and that the appellant should *within two days* of giving such notice enter into recognizance &c., Sunday is to be counted in the two days; so that where the notice of appeal was given on Friday, but the recognizance was only entered into on Monday after, it was held that the statute (Nuisances Removal Act, 1854), had not been satisfied. (*Ex parte Simkin*, 29 L. J., N. S., M. C. p. 23.)

Fractions of a day.

As to *fractions of a day*, the Master of the Rolls, in *Lester v. Garland* (15 Ves. 248), observes, "Our law rejects fractions of a day more generally than the civil law does. The effect is to render the day a sort of indivisible point; so that any act done in the compass of it is no more referable to any one than to any other portion of it; but the act and the day are co-extensive, and therefore the act cannot be said to be past till the day is past." (*And see Hardy v. Ryle*, 9 B. & C. 603; 4 Men. & R. 295.) But though the law generally rejects *fractions of a day*, (15 Ves. 257; *Co. Lit.* 185 b.; *Field v. Jones*, 9 East, 154; *Latless v. Holmes*, 4 T. R. 660; *Doe d. Osborn v. Spencer*, 11 East, 496, 498; *Butler and Baker's case*, 3 Rep. 36 a.) yet it admits it in cases where it is necessary to distinguish for the purposes of justice; and "I do not see why the very hour may not be so too, where it is necessary, and can be done; for it is not like a mathematical point, which cannot be divided." (*Per Lord Mansfield, Combe v. Pitt*, 3 Burr. 1434; *Field v. Jones*, 9 East, 154; *Butler and Baker's case*, 3 Rep. 36, a.)

Therefore, a fraction of a day was admitted in support of a commission of bankruptcy, by allowing evidence that the act of bankruptcy, though on the same day, was previous to issuing the commission. (8 Ves. 8.) So where goods are seized under a *fiery facias*, the same day that the party commits an act of bankruptcy, it is open to inquire at what time of the day the goods were seized and the act of bankruptcy was committed; and the validity of the execution depends on the actual priority. (*Sadler v. Leigh*, 4 Camp. 197; *Thomas v. Desanges*, 2 B. & Al. 586; 2 Bla. Com. 141, note by Chitty; *Pewtress v. Annan*, 9 Dowl. P. C. 828; and see further, *Bowen v. Bramidge*, 3 C. & P. 140; 1 Mont. & Ayrton, 13.)

So the particular hour at which a defendant dies will be regarded, so as to see whether execution issued previous to his demise. (*Clinch v. Smith*, 4 Jur. 86; 8 Dowl. P. C. 337.)

An hour consists of sixty minutes. (*Com. Dig. Ann. (C.)*.) By a misprint in 2 Inst. 318, it is stated to be forty minutes. There is a distinction in law as to the certainty of stating a month, or day, or an hour. When a fact took place, *circa horam* is sufficient; but not so as to a day, which must be stated with precision, though it may be varied from in proof. (2 Inst. 318; 2 Bla. Com. 140, notes by Chitty.)

The terms "forthwith," and "immediately," and "instantly," should always receive a reasonable construction. They should be in general construed to mean as soon after as can reasonably be required. (See *Reg. v. Robinson*, 4 P. & D. 391; *Thompson v. Gibson*, 9 Dowl. 717; 8 M. & W. 281; *Gillett v. Green*, *id.* 217; 7 M. & W. 347; *Page v. Pearce*, 9 Dowl. 815; 8 M. & W. 177; *Reg. v. Brownlow*, 3 P. & D. 52.)

In the case of a written agreement for the hire of a vessel, to be made ready to take on board "forthwith," evidence is admissible to show that the parties agreed that the vessel should be ready in two days. (*Simpson v. Henderson*, 1 M. & Malk. 300.)

In *Doe v. Sutton* (9 C. & P. 700), it was held by *Denman*, C. J., that a covenant "forthwith" to put premises into complete repair, must receive a reasonable construction, and is not to be limited to any specific time; and therefore that it was a question for a jury, in an action for a breach of it, to say upon the evidence, whether the defendant had done what he reasonably ought to have done in performance of it.

When no time is expressly mentioned for the performance of an act, the law considers that it shall take place within a reasonable time. (See *Greaves v. Ashlin*, 3 Camp. 426; *Ellis v. Thompson*, 3 M. & W. 456.)

What shall be a reasonable time the justices are to determine. (*Com. Dig. Temp. D.*) But in *Startup v. Macdonald*, 2 Man. & Gr. 395, it was considered that a question of reasonable time for the performance of a contract with reference to the usage of trade and hours of business, was one of fact and not of law.

It has been held in the case of a demise by parol, (and it seems in writing also not under seal, *Doe v. Hopkinson*, 3 D. & Ry. 507,) and in general terms, to hold from feast to feast, as from Michaelmas to Michaelmas, it will *prima facie* be a holding from such feast according to the new style, unless by the custom of the country where the lands lie (which custom may be proved by parol testimony) such tenancies commence according to the old style. (*Furley d. Mayor of Canterbury v. Wood*, 1 Esp. 198, cited in *Rum. Eject.* 112; *Adams Eject.* 2nd edit. 129; 3rd edit. 145; and see 3 D. & R. 508, 509; and 11 East, 313.) And in cases of parol taking at Martinmas, &c., generally parol evidence is receivable without reference to custom to show whether the day of taking was intended to be calculated according to the new or old style. (*Id.*; *Smith v. Walton*, 8 Bing. 238; 11 M. & Sc. 380.) If, however,

An hour.

"Forthwith."  
"Immediately."  
"Instantly."

Reasonable time.

Old and new style,  
construction of.



the demise be *by deed* to hold from any particular feast, as "from the feast of St. Michael's, &c." the holding must be taken to be according to the new style, notwithstanding the custom, and this rule prevails, although the tenancy be created by a holding over after the expiration of the lease, and the original entry was according to the old style. (*Doe d. Spicer v. Lea*, 11 *East*, 312; *Smith v. Walton*, *supra*. See *Doe v. Hopkinson*, 3 *D. & R.* 508, 509, and 11 *East*, 313, *per Cur.*)

## Tithes.

### I. *Summary Remedy for, when due from any Person*, 972.

[7 & 8 Will. 3, c. 6; 27 Geo. 2, c. 20; 53 Geo. 3, c. 127; 7 Geo. 4, c. 15; 7 & 8 Geo. 4, c. 17; 5 & 6 Will. 4, c. 74; 4 & 5 Vict. c. 36.]

### II. *Summary Remedy for, and other Church Rates and Payments due from Quakers only*, 979.

[7 & 8 Will. 3, c. 34; 1 Geo. 1, st. 2, c. 6; 27 Geo. 2, c. 20; 53 Geo. 3, c. 127; 5 & 6 Will. 4, c. 74.]

### III. *Of Contempts for Tithes in the Spiritual Court*, 981.

[27 Hen. 8, c. 20; 32 Hen. 8, c. 7.]

### IV. *Enforcing Payment of Apportionment of Tithes among several parties liable, and appointment of place of deposit of confirmed instrument of apportionment*, 982.

[5 & 6 Vict. c. 54; 9 & 10 Vict. c. 73; 23 & 24 Vict. c. 93.]

### V. *Forms*, 983.

### I. *Summary Remedy for Tithes due from any Person*.

Preliminary observations on the statutes as to.

The 7 & 8 Will. 3, c. 6, concerns small tithes only, due from all persons whatsoever; the 7 & 8 Will. 3, c. 34, and 1 Geo. 1, st. 2, c. 6, concern Quakers' tithes only, great and small, and their other church dues. These several acts are entirely distinct, the methods of proceeding in each respectively, are different in almost every instance. They are here inserted separately, with separate forms for each, to suit their distinct methods.

The 7 & 8 Will. 3, c. 6 (which we shall presently notice more fully), gives a summary remedy, before two justices of the peace, for the more effectual recovery of small tithes, offerings, oblations, obventions, and compositions, where the same do not amount to above the yearly value of 40s. from any person.

The 53 Geo. 3, c. 127, s. 4, extends this summary remedy to all tithes whatever, whether great or small, where the value does not exceed 10*l*.

And these provisions are extended by 5 & 6 Will. 4, c. 74, and 4 & 5 Vict. c. 36.

The 7 Geo. 4, c. 15, enacts, that in places where justices are pastors of the church, the tithes are to be recovered before justices of any adjoining county.

By virtue of these statutes, if any person subtract, or fail in the payment of tithes for twenty days after demand thereof, the parson, vicar, or other person to whom they are due, may make his complaint in writing before any justice of the peace, who shall summon the persons against whom the complaint is made, before two justices of the peace, neither of whom is to be patron of the benefice to which the

tithes belong, who are authorised to hear and determine all such complaints touching tithes, oblations, and compositions subtracted or withheld, where the value does not exceed 10*l.*; and, since 5 & 6 Will. 4, c. 74, and 4 & 5 Vict. c. 36, this is the only way of recovering them, except where the title to the tithe, &c., or the liability or exemption of the property alleged to be subject to the tithe, is *bonâ fide* in question. The tithes must have become due, &c. within two years before the complaint laid. The enactments do not it will be seen extend to tithes in the city of London, or the liberties thereof, or in any other city or town corporate, where the same are settled by any act of parliament.

"In principle it is clear that the statute of William the Third was intended only to apply to those cases in which the tithes were actually due, independently of any dispute upon matters of law, either with regard to the person receiving them, or the manner of receiving them. We cannot doubt that this is the principle of the act. The object of it was to give to the owner of tithes an expeditious mode of recovering them; and it must be obvious that a cheap and expeditious remedy in such cases must be no less beneficial to the tithe-owner than to him who is to pay. Every suit for subtraction of tithes, whether in a court of common law, or a court having ecclesiastical cognizance, must in its nature be very expensive, and of course equally burdensome to him who claims and him who pays. One cannot doubt that it was to remedy this evil this act was passed." (*Per Abbott, C. J., R. v. Jeffrey, 2 D. & R. 860; 1 B. & C. 604; 3 Eag. & Y. 1098; Gwil. 2065.*)

We will now proceed to notice the above statutes and the decisions thereon in detail.

The 7 & 8 Will. 3, c. 6, "An Act for the more easy Recovery of 7 & 8 Will. 3, c. 6. Small Tithes;" "for the more easy and effectual recovery of small tithes, and the value of them, where the same shall be unduly subtracted \* and detained, where the same do not amount to above the yearly value of 40*s.* [extended to 10*l.*, &c., by 53 Geo. 3, c. 127, s. 4, *post*, 977], from any one person," enacts "that all and every person and persons shall henceforth well and truly set out and pay all and singular the tithes, commonly called small tithes, and compositions and agreements for the same, with all offerings, oblations, and obventions to the several rectors, vicars, and other persons to whom they are or shall be due, in their several parishes within this kingdom of England, dominion of Wales, and town of Berwick-upon-Tweed, according to the rights, customs, and prescriptions commonly used within the said parishes respectively; and if any person or persons shall hereafter subtract or withdraw, or any ways fail in the true payment of such small tithes, offerings, oblations, obventions, or compositions as aforesaid, by the space of twenty days at most after demand thereof, then it shall and may be lawful for the person or persons to whom the same shall be due, to make his or their complaint in writing [see Form (No. 1), *post*] unto two (a) or more of his Majesty's justices of the peace within that county (b), riding, city, town corporate, place, or division, where the same shall grow due; neither of which justices of peace is to be patron of the church or chapel whence the said tithes do or shall arise, nor any ways interested in such tithes, offerings, oblations, obventions, or compositions aforesaid."

\* *Sic in act.*

Small tithes not paid in 20 days after demand, complaint may be made to two justices not interested.

An order for non-payment of small tithes was quashed, because it

(a) By 53 Geo. 3, c. 127, s. 4, it may be to one justice.

(b) By the 7 Geo. 4, c. 15, (*post*, p. 977), where the justices are patrons of

the living, the tithes are to be recovered before justices of any adjoining county, &c.

1. *Summary  
Remedy for  
Tithes due from  
any Person.*

7 & 8 Will. 3, c. 6.

Who may summon  
the persons com-  
plained of, and on  
default of appear-  
ance determine  
complaint, &c.

On refusal to pay  
in ten days after  
notice, constables,  
&c. may distrain.

Justices to ad-  
minister an oath.

Not to extend to  
London, &c.

No complaint to  
be heard unless  
made within two  
years.

Persons aggrieved  
may appeal to  
sessions.

was only upon complaint generally, whereas the statute requires the complaint to be in writing. (*R. v. Furness*, 1 Str. 264.) No particular form, however, is requisite, and so long as it substantially shows the subject-matter of the complaint, to give the justices jurisdiction, it will suffice.

Sect. 2. That if hereafter any suit or complaint shall be brought to two or more justices of the peace as aforesaid, concerning small tithes, offerings, oblations, obventions, or compositions as aforesaid, the said justices are hereby authorised and required to summon, in writing under their hands and seals, by reasonable warning, every such person or persons against whom any complaint shall be made as aforesaid, and after his or their appearance, or upon default of their appearance, the said warning or summons being proved before them upon oath, the said justices of peace, or any two or more of them, shall proceed to hear and determine the said complaint, and upon the proofs, evidences, and testimonies produced before them, shall, in writing under their hands and seals, adjudge the case, and give such reasonable allowance and compensation for such tithes, oblations, and compositions so subtracted or withheld as they shall judge to be just and reasonable, and also such costs and charges not exceeding 10s., as upon the merits of the cause shall appear just.

Sect. 3. That if any person or persons shall refuse or neglect, by the space of ten days after notice given, to pay or satisfy any such sum of money, as upon such complaint and proceeding shall by two or more justices of the peace be adjudged as aforesaid, in every such case the constables and churchwardens of the said parish, or one of them, shall by warrant under the hands and seals of the said justices to them directed, distrain the goods and chattels of the party so refusing or neglecting as aforesaid; and after detaining them, by the space of three days, [by 27 Geo. 2, c. 20, not less than four days, nor more than eight,] in case the said sum so adjudged to be paid, together with reasonable charges for making and detaining the said distress, be not tendered or paid by the said party in the mean time, shall and may make public sale of the same, and pay to the party complaining so much of the money arising by such sale as may satisfy the said sum so adjudged, retaining to themselves such reasonable charges for making and keeping the said distress, as the said justice shall think fit, and shall render the overplus (if any be) to the owner.

Sect. 4. That it shall and may be lawful for all justices of peace, in the examination of all matters offered to them by this act, to administer an oath or oaths to any witness or witnesses, where the same shall be necessary for their information, and for the better discovery of the truth.

Sect. 5. That this act, or anything herein contained, shall not extend to any tithes, oblations, payments, or obventions, within the city of London or liberties thereof, nor to any other city or town corporate where the same are settled by any act of parliament in that case particularly made and provided.

Sect. 6. That no complaint for or concerning any small tithes, offerings, oblations, obventions, or compositions, hereafter due, shall be heard and determined by any justices of the peace, by virtue of this act, unless the complaint shall be made within the space of two years next after the times that the same tithes, oblations, obventions, and compositions, did become due or payable; anything in this act contained to the contrary notwithstanding.

Sect. 7. That any person finding him, her, or themselves aggrieved, by any judgment to be given by any two justices of the peace, shall and may appeal to the next general quarter sessions to be held for that county, riding, city, town corporate, or division, and the justices of the peace there present, or the major part of them, shall proceed finally

to hear and determine the matter, and to reverse the said judgment if they shall see cause; and if the justices then present, or the major part of them, shall find cause to confirm the judgment given by the first two justices of the peace, they shall then decree the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable; and no proceedings or judgment had or to be had by virtue of this act shall be removed or superseded by virtue of any writ of *certiorari*, or other writ out of his Majesty's courts at Westminster, or any other court whatsoever, unless the title of such tithes, oblations, or obventions, shall be in question; any law, statute, custom, or usage, to the contrary notwithstanding. [As to appeals in general, see "*Appeal*;" as to *certiorari*, see "*Certiorari*."]

1. *Summary Remedy for Tithes due from any Person.*

7 & 8 Will. 3, c. 6.

If judgment be confirmed, justices to give costs, &c. *Certiorari*.

[With regard to the writ of *certiorari*, it seems a doubtful question whether the word "*title*" is to be taken in a strict sense, as applying merely to those cases in which the question is to whom the tithes are due, or whether it extends to a question of prescription, *modus*, custom, or other exemption, which does not negative the *prima facie* title, but only operates as a legal bar to the demand of tithes. From what fell from Abbott, C. J., in *R. v. Jefferys*, *infra*, it should seem the word "*title*" ought to be taken in its strict sense. (*Sed vide R. v. Furness*, 11 Mod. 320; *R. v. Whitlock*, 1 Stra. 264; 1 E. & Y. 750.) Before a *certiorari* issues, it must be shown that the title was really in question. (*R. v. Wakefield*, 1 Burr. 485; 2 E. & Y. 153; see *ante*, "*Conviction*."]

Sect. 8. That where any person or persons complained of for subtracting or withholding any small tithes, or other duties aforesaid, shall, before the justices of the peace to whom such complaint is made, insist upon any prescription, composition, or *modus decimandi*, agreement or title, whereby he or she is or ought to be freed from payment of the said tithes, or other dues in question, and deliver the same in writing to the said justices of the peace, subscribed by him or her, and shall then give to the party complaining reasonable and sufficient security, to the satisfaction of the said justices, to pay all such costs and damages, as upon a trial at law to be had for that purpose, in any of his Majesty's courts having cognizance of that matter, shall be given against him, her, or them, in case the said prescription, composition, or *modus decimandi*, shall not upon the said trial be allowed; that in that case the said justices of the peace shall forbear to give any judgment in the matter; and that then and in such case the person or persons so complaining shall and may be at liberty to prosecute such person or persons for their said subtraction in any other court or courts whatsoever, where he, she, or they might have sued before the making of this act; anything in this act to the contrary notwithstanding.

Persons complained of, insisting on any composition, &c.; and giving security to pay costs, justices not to give judgment.

[The sessions, on an appeal, may reject evidence of a *modus* which was not offered to the two justices who made the order. It seems, also, that the power of justices to try questions of title under 7 & 8 Will. 3, c. 6, is taken away by the eighth section of that act, where a question of *modus* is raised. (*R. v. Jeffreys*, 1 B. & C. 604; 2 D. & R. 860; 3 E. & Y. 1098.) Two justices, by an order dated the fifth day of November, 1821, ordered *Jeffreys* to pay to the lessee of the tithes of the parish of Glemsford, in the county of Suffolk, the sum of 6*l.* for his tithe of milk and calves, arising in the parish of Glemsford, and due to the lessee, together with his costs and charges. *Jeffreys* was duly summoned to answer the complaint of the lessee, and appeared before the justices, but offered no evidence of a *modus*. The sessions, on appeal, confirmed the order, subject to the opinion of the court upon the following case:—The respondent having proved the notice, summons, and order, and his title as lessee, and that the value of the tithe was of the amount

Questions of *modus*.

1. *Summary  
Remedy for  
Tithes due from  
any Person.*

7 & 8 Will. 3, c. 6.

demand, the appellant claimed to be exempted from the payment of the tithe, insisting that it was covered by a *modus*, and he tendered evidence to prove the existence of such a *modus*. The court rejected the evidence, being of opinion that they had no power to try the question. *Abbott, C. J.*, after argument, said, "As at present advised, I am disposed to think that by *modus*, in this statute, something different from title is meant. And as the word *modus* is not to be found in the seventh section, which relates to the *certiorari*, I think that the writ ought not to have issued. I am also disposed to think, that the eighth section is compulsory, that the party relying upon a *modus* shall set it up in the manner thereby directed. The act was intended to apply where there was no question of law as to the right to the tithe; that in such cases the party entitled might have a cheap remedy, which could not be injurious to the party from whom the tithe is due. If the eighth section be not compulsory, this consequence will follow, that the party called upon to pay may, at his will and pleasure, leave the question of *modus* to be tried by the justices, or may withdraw it from their consideration; whereas the other side can have no such option. This, however, is a point of great consequence, and I should have wished for more time to consider it, if our judgment proceeded upon that ground. But upon the other point I entertain no doubt. If it was originally the intention of the party to set up a *modus*, he should have stated that before the two justices. In making a claim of tithes, the party would come prepared to show the occupation of land by the party refusing to pay, and that titheable matter was produced. A question of *modus* is something quite distinct from that which the party claiming would come prepared to prove. If, therefore, the *modus* was not set up in the first instance, the justices at sessions might exercise their discretion as to receiving or rejecting evidence of it. The claimant might otherwise be taken by surprise, and the defendant would obtain a very unfair advantage." Order of sessions affirmed.]

A bare assertion  
of claim of *modus*  
not sufficient.

[A bare assertion by the defendant of the existence of the prescription, composition, or *modus*, &c., will not, it seems, suffice to prevent the justices from giving judgment: the defendant must satisfy the justices that there is a *bond fide* ground for setting up the prescription, &c. (See *R. v. Wrottesley*, 1 B. & Ad. 648; *R. v. Chapelwardens of Milnrow*, 5 M. & Sel. 248).]

Judgment to be  
enrolled at next  
sessions by clerk  
of peace, &c.

Sect. 9. That every person and persons, who shall by virtue of this act obtain any judgment, or against whom any judgment shall be obtained, before any justices of the peace out of sessions, for small tithes, oblations, obventions, or compositions, shall cause or procure the said judgment to be enrolled at the next general quarter sessions to be holden for the said county, city, riding, or division; and the clerk of the peace for the said county, city, riding, or division, is hereby required, upon tender thereof, to enrol the same; and that he shall not ask or receive for the enrolment of any one judgment any fee or reward exceeding 1s.; and that the judgment so enrolled, and satisfaction made by paying the same sum so adjudged, shall be a good bar to conclude the said rectors, vicars, and other persons, from any other remedy for the said small tithes, oblations, obventions, or compositions for which the said judgment was obtained.

Persons removing,  
justices may cer-  
tify judgment, &c.

Sect. 10. That if any person or persons against whom any such judgment or judgments shall be had as aforesaid, shall remove out of the county, riding, city, or corporation, after judgment had as aforesaid, and before the levying the sum or sums thereby adjudged to be levied, the justices of the peace who made the said judgment, or one of them, shall certify the same, under his or their hands and seals, to any justice of peace of such other county, city, or place wherein the said person or persons shall be inhabitants; which said justice is hereby authorised and required, by warrant under his hand and seal, to

Distress out of  
county.

be directed to the constables or churchwardens of the place, or one of them, to levy the sum or sums so adjudged to be levied as aforesaid, upon the goods and chattels of such person or persons, as fully as the said other justices might have done, if he, she, or they had not removed as aforesaid; which shall be paid according to the said judgment.

Sect. 12. That the said justices of the peace, who shall hear and determine any of the matters aforesaid, shall have power to give costs, not exceeding 10s. to the party prosecuted, if they shall find the complaint to be false and vexatious; which costs shall be levied in manner and form aforesaid.

Sect. 13. That if any person or persons shall be sued for anything done in execution of this act, and the plaintiff in such suit shall discontinue his action, or be nonsuit, or a verdict pass against him, that then, in any of the said cases, such person or persons shall recover double costs. [See now, however, the 5 & 6 Vict. c. 97, ss. 1 & 2, title "*Justices*."] Double costs.

Sect. 14. That any clerk, or other person or persons, who shall begin any suit for recovery of small tithes, oblations, or obventions, not exceeding the value of 40s., in his Majesty's Court of Exchequer, or in any of the ecclesiastical courts, shall have no benefit by this act, or any clause in it, for the same matter for which he or they have so sued.

1. *Summary Remedy for Tithes due from any Person.*  
7 & 8 Will. 3, c. 6.

Costs of complaint.

Double costs.

Suits for tithes not exceeding 40s., to have no benefit by this act.

The 53 Geo. 3, c. 127, s. 4 (a), recites 7 & 8 Will. 3, c. 6, as to recovery of small tithes, to the value of 40s., and that it was expedient to enlarge such amount, and to extend the said amount to all tithes whatsoever of certain limited amount, and enacts, That such justices of the peace shall from and after the passing of this act, be authorised and required to hear and determine all complaints touching tithes, oblations, and compositions, subtracted or withheld, where the same shall not exceed 10*l.* in amount from any one person, in all such cases, and by all such means, and subject to all such provisions and remedies, by appeal or otherwise, as contained in the said act of king William, touching small tithes, oblations, and compositions not exceeding 40s.: provided always nevertheless, that from and after the passing of this act, one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said act is set forth.

53 Geo. 3, c. 127.

Justices may determine complaints respecting tithes not exceeding 10*l.*

The 7 Geo. 4, c. 15, "An Act to amend an act passed in the Seventh and Eighth Year of the Reign of King William the Third, for the more easy Recovery of Small Tithes," recites 6 & 7 Will. 3, c. 6, s. 1; and 53 Geo. 3, c. 127, s. 4, and that it is expedient, in certain cases, to alter and amend that part of the said recited act of king William the Third, which relates to the jurisdiction before which the said tithes shall be recovered, and enacts, That from and after the passing of this act, it shall and may be lawful, in all cities, towns corporate, or other towns or places in England, Wales, or Berwick-upon-Tweed, where the justices of the peace in and for the same are patrons of the said church or chapel, where any tithes or offerings do or shall arise, for two justices of the peace in and for any adjoining county, riding, or division, to hear and determine all complaints for withholding the said tithes and offerings not exceeding the amount of 10*l.*; such complaint to be made in writing by the said rector or vicar, or other person, his attorney, or agent.

7 Geo. 4, c. 15.

In places where justices are patrons of church, tithes to be recovered before justices of adjoining county.

Sect. 2. That nothing in this act shall be construed to repeal or alter any of the clauses or provisions of the said recited acts, or either of How far recited act repealed.

(a) See other provisions of this act, title "*Church*."

1. *Summary  
Remedy for  
Tithes due from  
any Person.*

7 Geo. 4, c. 15.  
Costs of distresses.  
5 & 6 Will. 4, c. 74.

them, save and except as to such parts thereof as are expressly altered or amended by the same.

By 7 & 8 Geo. 4, c. 17, the provisions of the 57 Geo. 3, c. 93, relative to the costs of small distresses, are extended to distresses for tithes. See "*Church*."

By 5 & 6 Will. 4, c. 74, intituled "An Act for the more easy Recovery of Tithes," reciting the 7 & 8 Will. 3, c. 6, whereby it was amongst other things enacted, that two or more of his Majesty's justices of the peace were authorised and required to hear and determine complaints touching small tithes, oblations, and compositions subtracted or withheld, not exceeding forty shillings: and the 53 Geo. 3, c. 127, whereby the jurisdiction of the said justices was extended to all tithes, oblations, and compositions subtracted or withheld, where the same should not exceed ten pounds in amount from any one person: and the 7 & 8 Will. 3, c. 34, which makes provision for the recovery of great and small tithes (not exceeding the amount of ten pounds) due from Quakers, by distress and sale, under the warrant of two justices: and the 1 Geo. 1, c. 6, extending the provisions of the said last-mentioned act in the case of Quakers, to all tithes or rates, and customary rights, dues, and payments belonging to any church or chapel: and that by the 53 Geo. 3, c. 127, the provisions in relation to Quakers were amended, and were also made applicable to any amount not exceeding 50l.: and that by an act of the Irish parliament, 7 Geo. 3, c. 21, amended and extended by an act of the United Kingdom, 54 Geo. 3, c. 68, similar provisions are in force in Ireland for the recovery, from Quakers, of great and small tithes, and customary and other rights, dues, and payments belonging to any church or chapel, not exceeding the amount of 50l.: and that it is highly expedient, and would further tend to prevent litigation, if, in the cases and with the exceptions hereinafter mentioned, all claimants were restricted to the respective remedies provided by the said recited acts; it is enacted, That from and after the passing of this act no suit or other proceeding shall be had or instituted in any of his Majesty's courts in England now having cognizance of such matter for or in respect of any tithes, oblations, or compositions withheld, of or under the yearly value of 10l. (save and except in the cases provided for in the two first recited acts), but that all complaints touching the same shall, except in the case of Quakers, be heard and determined only under the powers and provisions contained in the said two first-recited acts of parliament in such and the same manner as if the same were herein set forth and re-enacted; and that no suit or other proceeding shall be had or instituted in any of his Majesty's courts either in England or Ireland now having cognizance of such matter, for or in respect of any great or small tithes, moduses, compositions, rates, or other ecclesiastical dues or demands whatsoever, of or under the value of 50l., withheld by any Quaker either in England or Ireland; but that all complaints touching the same, if in England, shall be heard and determined only under the powers and provisions contained in the said recited acts of 7 & 8 Will. 3, c. 34, and the 53 Geo. 3; and, if in Ireland under the said recited act of the parliament of Ireland, of the 7 Geo. 3, and the said recited act of the 54 Geo. 3, in the same manner as if the same were herein set forth and re-enacted: provided always, that nothing hereinbefore contained shall extend to any case in which the actual title to any tithe, oblation, composition, modus, due or demand, or the rate of such composition or modus, or the actual liability or exemption of the property to or from any such tithe, oblation, composition, modus, due, or demand shall be *bonâ fide* in question, nor to any case in which any suit or other proceeding shall have been actually instituted before the passing of this act.

Proceedings for recovery of tithes under 10l. shall be had only under powers of two first-recited acts.

And of tithes amounting to 50l. due from Quakers under the other acts.

Provide where the title to the tithe, &c., is disputed.

[There can be no doubt that this enactment extends to compositions for tithes of or under the yearly value of 10*l.*, and the Court of Queen's Bench decided that it extends to the setting out of tithes of or under that amount, and that the action for treble value for not setting them out, given by the 2 & 3 Edw. 6, is taken away. (*Peyton v. Watson*, 11 *Law J.*, *N. S.*, 271, *Q. B.* 3 *Q. B.* 658.)]

Since 5 & 6 Will. 4, c. 74, if any tithe, oblation, or composition, not excepted in 7 & 8 Will. 3, c. 6, or exceeding 10*l.* yearly value, due from any other person be in arrear, it must be proceeded for before two justices, and if the title of the claimant or liability of the party sought to be charged is undisputed, two years arrears may be there recovered (*Robinson v. Purday*, 16 *M. & W.* 11). A mortuary is not an oblation or obvention within 7 & 8 Will. 3, c. 6, and is not recoverable before two justices. (*Aryton v. Abbot*, 18 *L. J.* 314, *Q. B.*)

Sect. 2. In case any suit or other proceeding has been prosecuted or commenced, or shall hereafter be prosecuted or commenced, in any of his Majesty's courts in England or Ireland, for recovering any great or small tithes, modus or composition for tithes, rate, or other ecclesiastical demand, subtracted, unpaid, or withheld by or due from any Quaker, no execution or decree or order shall issue or be made against the person or persons of the defendant or defendants, but the plaintiff or plaintiffs shall and may have his execution or decree against the goods or other property of the defendant or defendants; and in case any person now is detained in custody in England or Ireland under any execution or decree in such suit or proceeding, the sheriff or other officer having such person in his custody shall forthwith discharge him therefrom; and the plaintiff or plaintiffs in such suit or proceeding shall and may, notwithstanding such discharge, issue any other execution or take any other proceeding for recovering his demand and his costs out of the property, real or personal, of the person so discharged.

By 4 & 5 Vict. c. 36, an act to amend an act, 5 & 6 Will. 4, c. 74, 4 & 5 Vict. c. 36.

"for the more easy Recovery of Tithes;" and to take away the jurisdiction from the ecclesiastical courts in all matters relating to tithes of a certain amount, after reciting, that it is expedient to extend all the provisions of the 5 & 6 Will. 4, c. 74, to all suits in the ecclesiastical courts hereafter to be commenced for the recovery of any tithes, oblations, or compositions of or under the yearly value of ten pounds, and of any great or small tithes, moduses, compositions, rates, or other ecclesiastical dues or demands whatsoever, of or under the value of 50*l.*, withheld by any Quaker; enacts, That from and after the passing of this act all the enactments and provisions of the said recited act passed in the fifth and sixth years of his late Majesty king William the Fourth, respecting suits or other proceedings in any of her Majesty's courts in England, in respect of tithes, oblations, and compositions of or under the yearly value of 10*l.*, and of any great or small tithes, moduses, compositions, rates, or other ecclesiastical dues or demands whatsoever, of or under the value of 50*l.*, withheld by any Quaker, shall extend and be applied to all ecclesiastical courts in England.

**1. Summary  
Remedy for  
Tithes due from  
any Person.**

5 & 6 Will. 4, c. 74.  
Manner of recovering tithes due from Quakers.  
Proceedings before justices.

Enactments and provisions of the 5 & 6 Will. 4, extended to all ecclesiastical courts.

## II. Summary Remedy for Tithes and Church-Rates, and Payments due from Quakers only.

The 7 & 8 Will. 3, c. 34, s. 4, enacts, that where any Quaker shall refuse to pay or compound for any tithes, or to pay any church-rates [or by 1 Geo. 1, st. 2, c. 6, s. 2, for any customary or other rights, dues, or payments belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister or curate officiating in any church or chapel], any

7 & 8 Will. 3, c. 34.  
Complaint.



2. *Summary  
Remedy for  
Tithes and  
Church-Rates,  
and Payments  
due from  
Quakers only.*

7 & 8 Will. 3, c. 34.

Summons.

Hearing.

parson, vicar, curate, farmer, or proprietor of such tithes, or any churchwarden or chapelwarden, or other person who ought to have, receive, or collect any such tithes, rates, dues, or payments, may make complaint to any two justices, [or by 53 Geo. 3, c. 127, s. 6, *ante*, title "*Church*," one justice,] other than such as is patron of the church or chapel, or any way interested in the tithes.

Upon which complaint the said justices shall summon in writing, under their hands and seals, by reasonable warning, such Quaker.

And after appearance, or on default of appearance (the warning or summons being proved before them upon oath), they may proceed to examine on oath (or in such manner as by this act is provided) the truth of the complaint, and to ascertain and state what is due and payable.

Adjudication.

And, by order under their hands and seals, they may direct and appoint the payment thereof; so as the sum ordered (as is aforesaid) do not exceed 10*l*. [And by 53 Geo. 3, c. 127, s. 6, 50*l*.]

Distress and sale.

And, on refusal to pay, it shall be lawful for any one of the *next* two justices, by warrant under his hand and seal, to levy the same by distress and sale of the goods of such offender, his executors or administrators, rendering the overplus, the necessary charges of distraining being thereout first deducted and allowed by the said justice: unless it be in the case of appeal, and then no warrant of distress shall be granted till after the appeal shall be determined. [Sect. 5.]

Therefore, it seemeth best not to make out, at least not to execute, the warrant of distress, until after the next sessions.

Note again: here is no time limited for detaining the distress, nor charges allowed for the keeping of it; so that it may be sold immediately.

27 Geo. 2, c. 20.

And by 27 Geo. 2, c. 20, s. 1, which, in all other cases, gives the justices power, in their warrant of distress, to order the goods distrained to be detained for a certain time, not less than four days, the *tithes* and *church-rates* of Quakers (although not those other dues and payments above mentioned) are excepted. See "*Distress under Justice's Warrant*."

7 & 8 Will. 3, c. 34.

It is observable that 7 & 8 Will. 3, c. 34, limits the proceedings to the two *next* justices (not interested); and the statute of 1 Geo. 1, st. 2, c. 6, enlarges the same to *any* two justices (not interested) as to the complaint, summons, and order, but restrains the *distress* to the limitations in the statute of the 7 & 8 Will. 3,—that is, to one of the two *next* justices as aforesaid; which possibly may have been an oversight, for it may happen hereupon that neither of the two justices who made the order can enforce the execution of it by distress. To prevent which inconvenience, it may be proper that *one* at least of the justices to whom complaint is made be one of the two *next* justices (not interested). Now, however, by 7 Geo. 4, c. 15, (*ante*, p. 977) in places where justices are interested as patrons of the church, the tithes may be recovered before justices of any adjoining county.

7 Geo. 4, c. 15.

Appeal.

By 7 & 8 Will. 3, c. 34, s. 4, any person aggrieved by any judgment given by the two justices may appeal to the next general quarter sessions; where, if the judgment shall be affirmed, the justices present shall decree the same by order of sessions, and give costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant as to them shall seem reasonable. And no proceedings or judgment had by virtue of the statute, shall be removed by writ of certiorari or otherwise, unless the title of such tithes shall be in question.

Certiorari taken away.

Certiorari.

An order of two justices was made against three persons, being Quakers, for the payment of certain customary payments, called *chapel salary*, to the Rev. Mr. *Smith*, curate of the chapel of Burnside, in Westmoreland, where the said Quakers had estates chargeable with the

said payments. On appeal to the sessions, the order was confirmed. The Quakers moved for a *certiorari*, and though cause was shown against the issuing of it, yet a *certiorari* was granted; and the return was filed, and exceptions were taken to it, and argued at the bar. Lord Mansfield, C. J., delivered the opinion of the court:—"That the *certiorari* ought not to have issued at all; that the return should be taken off the file, and all proceedings thereon fall to the ground; and that the orders of the justices and sessions should be remanded. The order of the justices (he observed) was made on 1 Geo. 1, st. 2, c. 6, which extends 7 & 8 Will. 3, c. 34, concerning tithes, to all customary payments due to clergymen. Those two acts are to be taken together as one law. They were intended for the benefit of the Quakers; to prevent their being liable to expensive suits for refusing to pay tithes upon scruples of conscience, by giving an apparent compulsory method of levying tithes and other customary payments in a summary way. This proceeding cannot be removed by *certiorari*, unless the title to these customary payments comes in question; and on this proviso the present question arises. The affidavits read on the original motion for the *certiorari* set forth, that before the justices and the sessions the defendants controverted the right of the curate to these customary payments. The affidavits against the *certiorari* say, that these payments have been made from time immemorial; that no inhabitant ever disputed it but these Quakers, that they have enjoyed the messuages but a few years; and that the former inhabitants never disputed the right of the parson. Taking these affidavits together, it is clear that the Quakers controvert the right to the customary only, as all Quakers controvert the payment of all dues to all clergymen upon scruples of conscience, which is the case directly within the act, and the proceeding must therefore follow the directions of the act. The Quakers themselves have acknowledged the jurisdiction of the justices by appealing to the sessions; whereas, had they intended to dispute the title to these customary payments, they would at first have removed the order of two justices by *certiorari*. The only difficulty remaining arises from the return already filed. But there are several instances of this court superseding a *certiorari* after the return filed; as, where an order of justices is removed, and it appears, upon the return, that the parties had a right to appeal to the sessions, and that the time for appealing was not expired when the *certiorari* issued; in such case, this court supersedes the writ of *certiorari*, *quia improvide emanavit*. The same must be done in the present case." (*R. v. Roger, Wakefield, and others*, H. T., 31 Geo. 2.)

2. *Summary Remedy for Tithes and Church-Rates, and Payments due from Quakers only.*  
7 & 8 Will. 3, c. 34.

As to costs of distresses, see 7 & 8 Geo. 4, c. 17, tit. "*Distress*." Since 5 & 6 Will. 4, c. 74, *ante*, p. 978, and 4 & 5 Vict. c. 36, *ante*, p. 979, this proceeding for the recovery of tithes to the amount of 50*l*. due from Quakers is the only mode that can be adopted.

Costs of distress.  
Jurisdiction of superior courts taken away.

### III. Of Contempts for Tithes in the Spiritual Court.

By 27 Hen. 8, c. 20, s. 1, if the ecclesiastical judge shall, for any contempt, contumacy, disobedience, or other misdemeanor of any defendant in the case of tithes, make information and request to the justices of the peace of the shire where the offender dwelleth, to assist him to order and reform any such person, two of the said justices (one being of the quorum), may cause the person to be attached, and commit him to ward, till he shall have found sufficient surety, to be bound to the king by recognizance or otherwise, to give obedience to the due process, proceedings, decrees, and sentences of the ecclesiastical court where the suit shall be. This act does not extend to London.

Contempt of process.

### 3. Of Contempts for Tithes in the Spiritual Court.

Contempt after judgment.

And by 32 Hen. 8, c. 7, s. 4, if any person, after sentence definitive given against him in the ecclesiastical court, shall obstinately and wilfully refuse to pay his tithes, or duties, or sums of money adjudged for the same, two justices (one being of the quorum) may, upon information, certificate or complaint in writing, by the ecclesiastical judge, cause the party refusing to be attached and committed to the next gaol, till he shall have found sufficient sureties, by recognizance or otherwise, to perform the said definite sentence, and judgment.

See 53 Geo. 3, c. 127, *ante*, tit. "Church."

The remedy against contumacious persons, under the above statute of 27 Hen. 8, is not taken away by 7 & 8 Will. 3, c. 34. (*R. v. Sanchee*, 1 *Ld. Raym.* 323.)

## IV. Enforcing payment of Apportionment of Tithes amongst several Parties, and appointment of a place for Deposit of confirmed Instrument of Apportionment.

5 & 6 Vict. c. 54.

Remedy for enforcing payment of contribution of rent-charge.

By 5 & 6 Vict. c. 54, "An Act to amend the acts for the Commutation of Tithes in England and Wales, and to continue the officers appointed thereunder," &c.; the "Act for the Commutation of Tithes in England and Wales, 6 & 7 Will. 4, c. 71;" and the 5 Vict. c. 7, amending the same, are recited; and by sect. 16, it is enacted, "that in case any land charged with one amount of rent charge shall belong to two or more landowners in several portions, and the owner of any one of such portions, or his tenant, shall have paid the whole of such rent-charge, or any portion thereof greater than shall appear to him to be his just proportion, and contribution thereto shall have been refused or neglected to be made by any other of the said landowners, or his tenant, after a demand in writing made on them, or either of them, for that purpose, it shall be lawful for any justice of the peace acting for the county or other jurisdiction in which the land is situated, upon the complaint of any such landowner, or his tenant or agent, to summon the owner so refusing or neglecting to make contribution, or his tenant, to appear before any two or more such justices of the peace, who, upon proof of the demand and of service of the summons, as hereinafter provided, whether or not the party summoned shall appear, shall examine into the merits of the complaint, and determine the just proportion of the rent-charge so paid as aforesaid, which ought to be contributed by the landowner of such other portion of the said land, and by order, under their hands and seals, shall direct the payment by him of what shall in their judgment be due and payable in respect of such liability to contribution, with the reasonable costs and charges of such proceedings, to be ascertained by such justices; and thereupon it shall be lawful for the complainant to take the like proceedings for enforcing payment of the said amount of contribution and costs, and with the like restriction as to the arrears recoverable, as are given to the owner of the rent-charge by the said first-mentioned act, or this act, for enforcing payment of the rent-charge.

9 & 10 Vict. c. 73.

Place of deposit of copy of confirmed apportionment may be altered by quarter sessions.

The 9 & 10 Vict. c. 73, "An Act for further amending the acts for the Commutation of Tithes in England and Wales," enacts, by sect. 17, That where the place of deposit of the copy of a confirmed instrument of apportionment which by the said act, 6 & 7 Will. 4, c. 71, "An Act for the Commutation of Tithes in England and Wales," is directed to be deposited with the incumbent and church or chapel wardens for the time being, or such other fit person as the commis-

sioners shall approve, shall be alleged to be inconvenient to the majority of the persons interested therein, or otherwise inconvenient or unsafe, it shall be lawful for any person interested in the lands or rent-charge to which such apportionment shall relate, to apply to the court of general quarter sessions of the peace of the county, riding, division, or place in which such deposit shall be situate, for an order for the deposit of such copy in some more convenient or secure custody or place, and fourteen days notice in writing of every such application shall be given to the persons in whose custody such copy shall at the time of such application be deposited; and it shall be lawful for the court at the quarter sessions for which such notice shall be given, to hear and determine such application in a summary way, or they may, if they think fit, adjourn it to the following session; and upon the hearing of such application the court may, if they think fit, order such copy to be removed from the custody of the persons with whom the same shall have been deposited, and to be deposited with such other persons or in such other custody as the court, having reference to the security and due preservation of such copy, and to the convenience of the parties interested therein, may think fit, and may make such order concerning the notice to be given of such removal and deposit, and concerning the costs of such application, or of any opposition thereto, as they may think reasonable.

4. *Enforcing Payment of Tithes among several Parties, &c.*

9 & 10 Vict. c. 73.

And by 23 & 24 Vict. c. 93, which amends and extends the several acts for commutation of tithes in England and Wales, it is enacted with respect to the custody and safe keeping of the sealed copy of any instrument of apportionment, by sect. 28, that whenever any person, other than the persons legally entitled to the possession of the same, shall have possession of the sealed copy of any confirmed instrument of apportionment, it shall be lawful for any two justices of the peace for the county or other jurisdiction within which the lands mentioned in the said apportionment are situate, upon the application of any person interested in the lands or rent-charge, and upon fourteen days' notice in writing of such application to the person or persons in whose custody such copy shall be at the time of such application, to hear and determine such application, and upon hearing such application the said justices may order such copy to be removed from the custody of the person holding the same, and to be deposited in such other custody as the said justices, having reference to the security and due preservation of such copy, and to the convenience of the parties interested therein, may think fit, and may impose a fine, not exceeding twenty shillings, for each day that any such copy shall be retained, contrary to the terms of such order, upon the person so retaining it, and may make such further order concerning the notice to be given of such removal and deposit, and concerning the costs of such application and the said fine, or of any opposition thereto, as they may think reasonable.

23 & 24 Vict. c. 93.

Justices may order an instrument of apportionment to be restored to proper custody.

## V. Forms.

*To J. P. esq., one [or, "J. P. and K. P., esqs., two"] of her Majesty's justices of the peace in and for the county of*

*A. B., of* , *in the said county, clerk, complaineth that he, the said*  
*A. B., did, on the* day of A. D. *being upwards of*  
*twenty days before the day of the date hereof, demand of C. D., of*  
*in the parish of* , *in the county aforesaid, [farmer,] the tithes [or,*  
*"compositions and agreements for the tithes,"] [offerings, oblations, and obven-*  
*tions,] which have justly become due, within two years now last past, from the*

(1). Complaint for tithes due from any person, on 7 & 8 Will. 3, c. 6, ss. 1, 6; and 53 Geo. 3, c. 127, s. 4.

## 5. Forms.

said C. D., unto him, the said A. B., to the value of \_\_\_\_\_; and that the said C. D. did, upon the said demand, refuse, and doth yet refuse, to pay, and hath not paid the same, nor any part thereof. The said complainant, therefore, prayeth such redress in the premises as to you shall seem meet, and as to the law doth appertain. Signed, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

## (2). Summons thereon.

\_\_\_\_\_ } To the constable of \_\_\_\_\_, and others whom this may concern.

Whereas complaint in writing hath been made unto me, J. P., one [or, "us, J. P. and K. P., two"] of her Majesty's justices of the peace in and for the said county, by A. B., of &c., in the said county, clerk, that C. D., of &c., in the said county, [farmer,] hath, for above the space of [twenty days] before the time of the said complaint so made unto me [or, "us"], as aforesaid, refused to pay unto the said A. B., and hath not yet paid, the tithes [or, "compositions and agreements for the tithes"], offerings, oblations, and obventions, arising in the said parish of \_\_\_\_\_, justly due, within two years now last past, from the said C. D. to the said A. B. to the value of \_\_\_\_\_. These are therefore to command you forthwith, upon sight hereof, to summon the said C. D. to appear before me [or, "us"], and such other of her Majesty's justices of the peace for the said county as may be present, at \_\_\_\_\_, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_ in the forenoon of the same day, to answer unto the same complaint. And be you then there to certify what you shall have done in the premises. Given under my hand and seal, [or, "our hands and seals"], at \_\_\_\_\_, in the said county, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

## (3). Order thereon for payment of tithes, &amp;c.

\_\_\_\_\_ } Whereas complaint in writing hath been made unto us, J. P. and \_\_\_\_\_ } K. P., esqs., two [or, "me, J. P., esq., one"] of her Majesty's justices of the peace in and for the said county, by A. B., rector, [or, vicar, &c., as the case may be], of the parish of \_\_\_\_\_, in the said county, that C. D., of &c., in the county aforesaid [farmer], is justly indebted unto him the said A. B. as rector of the said parish as aforesaid [or, vicar, &c., as the case may be], in the sum of \_\_\_\_\_, for compositions for the tithes and oblations in the said parish accruing due from the said C. D. to the said A. B., within two years last past, to wit, for the year \_\_\_\_\_: [or, "hath subtracted and withdrawn certain tithes of \_\_\_\_\_ to the value of \_\_\_\_\_, accruing unto him the said A. B., as rector of the said parish as aforesaid, from the said C. D., within the last two years, to wit, from \_\_\_\_\_ to \_\_\_\_\_"], and which have not been sued for or begun to be sued for in her Majesty's Court of Exchequer, or in any ecclesiastical court, and that the said C. D. hath failed in payment of the same, although demand thereof hath been made by the said A. B., of \_\_\_\_\_, from the said C. D. more than twenty days before the making of the said complaint, to wit, on \_\_\_\_\_, last past, and the same now remains due and unpaid; now we the said justices (being neither of us patron of the church of the said parish of \_\_\_\_\_, nor anywise interested in the tithes of the said parish,) having summoned the said C. D. and the said C. D. now appearing before us [or, "the said C. D. not appearing now before us in obedience to the said summons, and the service of the said summons being now duly proved to us upon oath"], and having examined the witnesses and proofs in this behalf, and duly considered the same, do find that the said C. D. is truly indebted to the said A. B., as rector of \_\_\_\_\_, in the sum of \_\_\_\_\_, for the compositions for the tithes and oblations aforesaid, [or, "that the tithes aforesaid have been so subtracted and withheld as aforesaid, and that the sum of \_\_\_\_\_ is a just and reasonable allowance and compensation for the same"] and we do therefore adjudge and order the aforesaid C. D. forthwith to pay, or cause to be paid, unto the said A. B. the aforesaid sum of \_\_\_\_\_, and also the sum of 10s. for the costs and charges of the said A. B. in prosecuting the said C. D. in this behalf, and as upon the merits of the case appear to us just. Given under our hands and seals, at \_\_\_\_\_, in the said county, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

Whereas, on the \_\_\_\_\_ day of \_\_\_\_\_, complaint in writing was made unto J. P., one of her Majesty's justices of the peace for the said county, by J. T., of &c., gentleman, lessee of the rector of the said parish of \_\_\_\_\_, that C. D., of &c., has failed in the true payment of the composition and agreement made with him for [or, "did unduly subtract and detain," as the case may be], tithes of ["hay, agistment, milk"], and also [as the case may be], which became due and payable within two years then last past, and before and on the \_\_\_\_\_ day of &c., last, from the said C. D. to the said J. T., as lessee, as aforesaid, and demanded from the said C. D. by the space of twenty days before the making of the said complaint [when no composition had been made, add, and that the said J. T. had not compounded or agreed or paid for the said tithes (as before), or any part thereof]; whereupon the said justice granted a summons in writing, under his hand and seal, setting forth the said complaint, and required the said C. D. to appear before such two justices of the peace for the said county as should be assembled at &c., in the same county, on &c., at [ten] o'clock in the forenoon, to answer to the said complaint [when the party appeared, add, "and the said C. D., having attended in pursuance of the said summons": Now we [two justices], A. B. and C. D., respectively being justices of our said lady the queen, assigned to keep the peace in and for the said county, being so assembled at &c., aforesaid, and being neither of us patron of the parish church of &c., aforesaid, nor any ways interested in the said tithes, dues, and oblations, having duly examined the truth of the said complaint upon oath, and having heard the said C. D. in his defence [or, where the party has not appeared, "and the said C. D. not having appeared before us, in pursuance of the said summons, and the due service thereof having been duly proved on oath before us"], do find and determine that there is justly due from the said C. D. to the said J. T., as lessee as aforesaid, the sum of \_\_\_\_\_, as a reasonable compensation for the said tithes of ["hay, agistment, &c.," as the case may be], become due and payable within two years from the time of making the said complaint; that is to say, on the said &c.; and we do therefore adjudge and order the said C. D. to pay, or cause to be paid, unto the said J. T. the aforesaid sum of \_\_\_\_\_, and also the sum of 10s. for his costs and charges in making and presenting the said complaint. Given under our hands and seals, at \_\_\_\_\_, in the said county, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

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(4). The like, in another form, on the complaint of the lessee of the tithes.

To the constable of \_\_\_\_\_, in the said county, and to the church-wardens of the parish of \_\_\_\_\_, in the said county, and to every of them, and all others whom this may concern. (5). Warrant of distress thereon.

Whereas, upon the complaint in writing of A. B., rector [or, "vicar," &c.] of the parish aforesaid, in the county aforesaid, C. D., of &c., in the county aforesaid, farmer, hath been duly summoned to appear before us, J. P. and K. P., esqs., two of her Majesty's justices of the peace in and for the said county, to be examined for the nonpayment of the tithes [or, "compositions and agreements for the tithes"], offerings, oblations, and obventions, due from the said C. D. unto the said A. B., as rector of the said parish as aforesaid, within two years last past, to wit, for the year \_\_\_\_\_, and which the said C. D. hath made default in payment of, although demand thereof hath been made by the said A. B. of and from the said C. D. more than twenty days before the making of the said complaint; and whereas the said C. D. appeared before us in obedience to the said summons [or, "did not appear before us in obedience to the said summons, and the service of the said summons having been duly proved to us on oath"], we, the said justices, being neither of us patron of the parish church [or, "chapel"] of \_\_\_\_\_ aforesaid, nor any way interested in any of the said tithes [compositions and agreements], offerings, oblations, or obventions, having duly examined the truth and justice of the said complaint, have by writing under our hands and seals ordered [let what follows correspond with the order] the said C. D. to pay unto the said A. B. the sum of \_\_\_\_\_, being the value of the said tithes [compositions and agreements], offerings, oblations, and obventions, which have become due from the said C. D. to the said A. B. within [two years] next before the said complaint so made unto us, as aforesaid, together with the sum of 10s. for the costs and charges of the said A. B. in and about the prosecuting of the said C. D. in this behalf: which said sums make in the whole the sum of \_\_\_\_\_. And whereas it appeareth unto us, the said

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justices, that the said C. D. had due notice of our said order for the space of ten days and upwards before the day of the date hereof, but hath refused to pay, and hath not yet paid, the said sum of \_\_\_\_\_, nor any part thereof: these are therefore to command you jointly and severally, that you, or some one of you, do forthwith distrain the goods and chattels of the said C. D.; and, in case the said sum of \_\_\_\_\_, together with your reasonable charges of making and detaining the said distress, be not paid, or tendered to be paid, by the said C. D. in \_\_\_\_\_ days [see the act, ante, p. 977] next after such distress made, that then you do make public sale of the said goods and chattels so distrained, as aforesaid, and, out of the money arising from such sale, that you pay, or cause to be paid, unto the said A. B. the said sum of \_\_\_\_\_, and thereout also deduct and detain your reasonable charges of making, keeping, and selling the said distress [see ante, p. 977]; and if any overplus shall remain after such payment and deduction as aforesaid, that then you do render the same unto him, the said C. D., upon demand. Given under our hands and seals, at \_\_\_\_\_ in the said county, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

(6). Complaint for Quakers' tithes, on 7 & 8 Will. 3, c. 31; 1 Geo. 1, st. 2, c. 6; and 53 Geo. 3, c. 127, (ante, p. 979).

To J. P., esq., one [or, "J. P. and K. P., esqs., two"] of her Majesty's justices of the peace in and for the county of \_\_\_\_\_.

A. B., vicar [or, "rector"] of the parish church of \_\_\_\_\_, in the said county, complaineth,

That C. D., of &c., in the county aforesaid, farmer, being a person commonly called a Quaker, hath refused to pay unto the said A. B., or to compound for, the tithes and other rights, dues, and payments belonging to the church of \_\_\_\_\_ aforesaid, and justly due to the said A. B. from the said C. D. The said complainant therefore prayeth such redress in the premises as to you shall seem meet, and as to law doth appertain. Signed, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

(7). Summons thereon.

\_\_\_\_\_ } To the constable of \_\_\_\_\_, in the said county, and others whom this may concern.

Whereas A. B., clerk, vicar [or, "rector"] of the parish church of \_\_\_\_\_ in the said county, hath complained unto me, J. P., esq., one [or, "us, J. P. and K. P., esqs., two"] of her Majesty's justices of the peace in and for the said county, that C. D., of &c., in the county aforesaid, farmer, being a person commonly called a Quaker, hath refused to pay unto the said A. B., or to compound for, the tithes and other rights, dues, and payments belonging to the church of \_\_\_\_\_ aforesaid, and justly due to the said A. B. from the said C. D.: these are therefore to require you forthwith to summon the said C. D. to appear before me [or, "us"], and such other of her Majesty's justices of the peace in and for the said county as may be present, at \_\_\_\_\_ in the said county, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_ in the forenoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the premises. Given under my hand and seal [or, "our hands and seals"], at \_\_\_\_\_ in the said county, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

(8). Order thereon for payment.

\_\_\_\_\_ } Whereas complaint in writing hath been made unto me, J. P., esq., one [or, "us, J. P. and K. P., esqs., two"] of her Majesty's justices of the peace in and for the said county, by A. B., vicar [or, "rector"] of the parish of \_\_\_\_\_, in the said county, that C. D., of &c., in the county aforesaid, farmer, being a person commonly called a Quaker, hath refused to pay to or to compound with the said A. B. for his tithes and other rights, dues, and payments belonging to the church of \_\_\_\_\_ aforesaid, and justly due unto the said A. B.: we, therefore, the said justices, being neither of us patron of the parish church of \_\_\_\_\_ aforesaid, nor any way interested in any of the said tithes, rights, dues, or other payments, having duly summoned the said C. D. before us, and having also duly examined the truth of the said complaint upon oath, do find that there is justly due for the same from the said C. D. to the said A. B., the sum of \_\_\_\_\_, and do order and appoint the aforesaid C. D. to pay or cause to be paid unto the said A. B. the aforesaid sum of \_\_\_\_\_;

and we do also order and appoint the aforesaid C. D. to pay or cause to be paid unto him, the said A. B., the further sum of 10s. for such costs and charges concerning the premises as upon the merits of the cause do appear to us just and reasonable, and which said sums make together the sum of . Given under our hands and seals, at , in the said county, the day of , in the year of our Lord

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— } To the constable of , and others whom this may concern.

(9). Warrant of distress thereon.

Whereas, upon the complaint in writing of A. B., vicar [or, "rector"] of the parish church of , in the said county, C. D., of , in the county aforesaid, farmer, being a person commonly called a Quaker, hath been duly summoned to appear before J. P. and K. P., esqs., two of her Majesty's justices of the peace in and for the said county, to be examined for non-payment of his tithes and other rights, dues, and payments belonging to the church of aforesaid, due from the said C. D. unto the said A. B.; and whereas the said justices, upon examination thereof, by writing under their hands and seals, have ordered the said C. D. to pay unto the said A. B. the sum of , for such his tithes and other rights, dues, and payments, as aforesaid, and moreover the sum of 10s. for the charges of the said A. B. in recovering the same, which said sums make together the sum of ; and whereas it appeareth unto me, J. P., esq., being one of the said justices, and also being one of the two next justices to the parish church of aforesaid, in the county aforesaid, not being patron of the said church, nor any way interested in any of the said tithes or other rights, dues, or payments, that the said C. D. hath had due notice of the said order, but hath refused and doth refuse to pay, and hath not paid the said sum of , nor any part thereof: these are, therefore, to authorise and command you, that you do forthwith levy the aforesaid sum of , by distress and sale of the goods and chattels of the said C. D., and, out of the money arising from such sale, that you do pay or cause to be paid unto the said A. B. the said sum of , and thereout also deduct your necessary charges of distraining; [see ante, p. 980], and if any overplus shall remain after such payment and deduction as aforesaid, that you do render the same unto the said C. D. Given under my hand and seal, at , in the said county, the day of in the year of our Lord

## Tobacco.

[12 Car. 2, c. 34; 22 & 23 Car. 2, c. 26; 1 & 2 Will. 4, c. 13.]

FOR the laws of customs and excise concerning tobacco, see "*Excise and Customs*."

By 12 Car. 2, c. 34, s. 1, no person shall plant any tobacco, on pain of forfeiting the same, or the value thereof, or 40s. for every rod or pole of ground planted with it; half to the king, and half to him that shall sue in any court of record. Planting tobacco.

And by 22 & 23 Car. 2, c. 26, s. 2, (which, by the 5 Geo. 1, c. 11, is continued along with the act of tonnage and poundage of the 12 Car. 2, c. 4,) it is enacted, that "all justices of the peace, within their several limits and jurisdictions, shall and do, a month before every general quarter sessions to be holden for their respective counties, issue forth their warrants to all high constables, petty constables, and tithingmen within their several limits, thereby requiring the said high constables, petty constables, and tithingmen, and every of them, to make diligent search and inquisition, what tobacco is then sown, set, planted, growing, curing, cured, or made, within their several and respective limits and jurisdictions, and by whom; and to make a true and lawful presentment in writing upon oath, at the next general quarter sessions to be holden for such county, of the names of all Justices of the peace are to command all constables, &c., to make a return to them of what tobacco is planted, and upon whose land.



22 & 23 Car. 2,  
c. 26.

Which present-  
ment, being filed,  
shall be a suffi-  
cient conviction.

Except upon  
notice it shall be  
traversed.

Power given to all  
officers, &c., to  
pull up and de-  
stroy all the  
plants, &c.

The penalty of  
officers not doing  
their duty in  
destroying of it.

The penalty for  
refusing to assist  
the officers.

The forfeiture for  
resisting the  
officers.

such persons as have sown, set, planted, cured, or made any tobacco, and what the full quantity of land is or was sown, set, or planted therewith, and who are the immediate tenant or tenants, or present occupiers of the land so sown, set, or planted, who are and shall be deemed planters thereof to all intents and purposes."

Sect. 3. Which said presentment upon oath shall be received and filed by the clerk of the peace of the said county in open sessions, and, after such receipt and filing, shall be a sufficient conviction in law, to all intents and purposes, of all such persons as shall be so presented for the sowing, setting, planting, improving to grow, making, or curing tobacco, either in seed, plant, leaf, or otherwise, contrary to the said recited acts, or either of them, unless such person or persons so presented (having notice given to him or them of such presentment made, by the delivery of a copy of such presentment to him or them, or by leaving a copy of such presentment at his or their dwelling-house or houses, or usual place of abode, in the presence of one or more credible witnesses, ten days at the least before the next quarter sessions) shall, at the quarter sessions next after such notice shall be given to him or them, traverse such presentment, and find sufficient sureties for the prosecuting and trying such traverse, at the quarter sessions to be holden for the said county next after such traverse shall be entered or made.

Sect. 4. All constables, tithingmen, bailiffs, and other public officers, shall and do, within their respective jurisdictions, from time to time, as often as occasion shall require, within fourteen days after warrant from two or more of the justices of the peace within such county, town, city, or place, to them, calling to their assistance such person or persons as they and every one of them shall find convenient and necessary, pluck up, burn, consume, tear in pieces, and utterly destroy all tobacco seed, plant, leaf, planted, sowed, or growing in any field, earth, or ground.

Sect. 5. If any such tobacco shall be suffered or permitted to grow, or be consumed in seed, plant, or leaf, in any township, tithing, parish, hamlet, or place, by the space of fourteen days after the receipt of such warrant or warrants, by the said constables, tithingmen, bailiffs, or other public officers of the respective townships, tithings, parishes, or hamlets as aforesaid, that then such constables, tithingmen, bailiffs, or other public officers respectively, shall, for every such offence, forfeit and pay the sum of 5s. for every rod, perch, or pole of ground so set, planted, or sowed with tobacco, and so proportionably for a greater or lesser quantity of ground; the one moiety thereof to the king's majesty, and the other moiety to him or them that shall sue for the same, to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster.

Sect. 6. In case any person or persons shall refuse or neglect to aid or assist (being thereunto required) any constable, bailiff, or other public officer, in the due execution of this act, that every such person or persons, for every such offence, upon conviction thereof made before two justices of the peace of the said county where such offence shall be committed, shall forfeit and pay the sum of 5s., to be levied by warrant from the said justices, by distress and sale of the offender's goods; and in case no distress can be found, then every such offender shall be committed to the common gaol of the said county, there to remain for the space of one week, without bail or mainprize.

Sect. 7. And if any person or persons whatsoever shall forcibly resist any constable, bailiff, or other public officer, or other person or persons whatsoever, in the due execution of this act, that then every such person, for every such offence, upon conviction thereof made before two justices of the peace of the said county where such offence shall be committed, shall forfeit and pay the sum of 5*l.*, to be levied by warrant from the said justices, by distress and sale of the

offender's goods; and in case no distress can be found, that then every such offender shall be committed to the common gaol of the said county, there to remain for the space of three months without bail or mainprize. 22 & 23 Car. 2, c. 26.

Sect. 9. Provided, that this act, nor anything therein contained, shall\* extend to the hindering of the planting of tobacco in any physic garden of either university, or in any other private garden for physic or chirurgery only, so as the quantity so planted exceed not one-half of one pole in any one place or garden. \* Sic in act. A saving for tobacco planted in the physic gardens.

By 1 & 2 Will. 4, c. 13, intituled "An Act to repeal an Act of the nineteenth year of King George the Third, for repealing so much of several acts as prohibit the Growth and Produce of Tobacco in Ireland, and to permit the Importation of Tobacco of the Growth and Produce of that Kingdom into Great Britain," reciting, "that by 12 Car. 2, c. 34, and by other acts since passed, the setting, planting, or improving to grow, making, or curing any tobacco, either in seed, plant, or otherwise, within the kingdom of England or in the kingdom of Ireland, is prohibited, except in any physic garden of either universities, or in any other private garden for physic or chirurgery, only so as the quantity planted exceed not one-half of one pole in any one place or garden; and that by 19 Geo. 3, c. 35, so much of the said first-recited act, and of 15 Car. 2, c. 7, which prohibited or restrained the setting, planting, or improving to grow, making, or curing tobacco, either in plant, seed, or otherwise, in the kingdom of Ireland, was repealed; and that by 22 Geo. 3, c. 73, for explaining the said recited act, and for permitting the use and removal of tobacco, the growth of Scotland, into England for a limited time, under certain restrictions, it was enacted and declared, that the 12 Car. 2, c. 34, and every other act and acts which had since passed for prohibiting the culture of tobacco in England, should extend and be construed to extend to that part of Great Britain called Scotland: and that it was expedient to repeal the 19 Geo. 3, and to revive in and extend to Ireland the 12 Car. 2, and any other acts since passed for prohibiting the growth and culture of tobacco:" it is enacted, "That the said act 19 Geo. 3, for repealing so much of the several acts as prohibited the growth and produce of tobacco in Ireland, shall be repealed; and that the 12 Car. 2, and so much of 15 Car. 2, as impose certain penalties on the growth and culture of tobacco in England and Ireland, and all and every other act and acts which have since passed for prohibiting the growth and culture of tobacco in Great Britain, shall be revived in and shall extend to and be deemed and construed to extend to Ireland; and that it shall not be lawful to plant, set, improve to grow, or cure, either in seed, plant, or otherwise, any tobacco in any part of the United Kingdom, save and except in the places and in the quantities and for the purposes in the said acts mentioned and allowed. 1 & 2 Will. 4, c. 13.

Recited act, 19 Geo. 3, c. 35, repealed; and 12 Car. 2, c. 34, revived in and extended to Ireland.

Sect. 2. The several acts for prohibiting the growth and culture of tobacco shall and may be put in force, in and throughout the United Kingdom, by the commissioners and by any officer or officers of customs or excise; and all sheriffs, mayors, bailiffs, and constables, and every of them, shall act in execution of the said acts on the information of any officer of excise as well as of any officer of customs. Acts to be put in force by officers of excise and customs.

Sect. 3. The several penalties and forfeitures in and by the 12th and the 15th Car. 2, or by this or any other act prohibiting the growth and culture of tobacco, imposed, shall and may be sued for, recovered, and levied, and all seizures under the said acts condemned, by the same means, and in the same manner, and under the same rules, restrictions, and regulations as any penalties or forfeitures may be sued for, recovered, and levied, or any seizure condemned, under any act or acts relating Penalties and forfeitures to be sued for, and goods to be condemned, under acts relating to customs and excise.

1 & 2 Will. 4,  
c. 13.

Penalty on having  
tobacco the  
growth of the  
United Kingdom  
in possession, &c.

to the revenues of customs or excise; and all such penalties and forfeitures shall, when recovered, be applied and disposed of in the same manner as penalties and forfeitures are directed by the said last-mentioned acts, or any of them, to be applied and disposed of; and all tobacco the growth of any part of the United Kingdom, and all snuff made from such tobacco, seized and condemned, shall be disposed of in the same manner as goods prohibited to be imported.

Sect. 4. If any tobacco, the growth or produce of any part of the United Kingdom, manufactured, or unmanufactured, or mixed with any tobacco of foreign growth, shall be delivered to, received by, or found in the possession of any manufacturer, dealer in, or retailer of tobacco or snuff, in any quantity whatsoever, or if any such tobacco shall be delivered to, or received by, or be found in the possession of any other person or persons whatsoever in any quantity exceeding one pound in weight, or if any manufacturer or dealer in or retailer of tobacco or snuff shall manufacture or use any tobacco of the growth of any part of the United Kingdom, or shall mix any such tobacco with any tobacco of foreign growth, or with any snuff made from tobacco of foreign growth, or if any manufacturer, dealer in, or retailer of tobacco or snuff shall purchase or sell any tobacco of the growth of any part of the United Kingdom, or any tobacco or snuff manufactured in the whole or in part from tobacco the growth of any part of the United Kingdom, or if any person whatsoever shall sell or dispose of any such tobacco, every such manufacturer, dealer and retailer, and other person so offending in any of the cases respectively aforesaid, shall for every such offence forfeit 100*l.*; and all such tobacco of the growth of any part of the United Kingdom, manufactured or unmanufactured, mixed or unmixed, and all snuff made wholly or in part from any such tobacco, shall be forfeited, and may be seized by any officer of customs or excise.

For penalty for hawking about tobacco or snuff for sale, see 5 & 6 Vict. c. 93, s. 13. Title "*Excise*," head "*Tobacco and Snuff*."

## Torn.

[See "*Leet*."] ]

[9 Hen. 3, c. 35; Magna Charta, c. 17; 52 Hen. 3, c. 10; 1 Edw. 3, c. 17; 13 Edw. 1, st. 2, c. 13; 31 Edw. 3, st. 1, c. 15; 1 Edw. 4, c. 2.]

Torn, what.

THE sheriff's torn is the king's court of record holden before the sheriff, for the redressing of common grievances within the county. (2 *Haw. c.* 10, s. 2.)

Meaning of the  
word.

And forasmuch as the sheriff did go in the circuit twice every year throughout every hundred within the county, it was called *tour* or *tourn*, which signifieth a circuit or perambulation. (2 *Inst.* 70.)

When to be  
holden.

By 31 Edw. 3, st. 1, c. 15, the sheriff shall make his turn yearly, once within a month after Easter, and another time within a month after Michaelmas; and if he holds it in other manner, he shall lose his turn for the time: that is, the court so holden for that time shall be void, and the sheriff shall lose the profit thereof. (2 *Inst.* 71.)

Where to be  
holden.

And also by 9 Hen. 3, c. 35, he shall keep his turn nowhere but in due place and accustomed.

Who need not  
appear at the  
torn.

By the statute of *Marlbridge*, 52 Hen. 3, c. 10, archbishops, bishops, earls, barons, men of religion, or women, shall not need to come to the sheriff's turn, unless their presence be specially required for some cause; and if any have tenements in divers hundreds, they shall not

need to come to the turn but in the bailiwicks where they dwell. (See 2 *Haw. c. 10, s. 11.*)

Tenants in ancient demesne are privileged by the common law from coming to this court, unless they and their ancestors have time out of mind used to come to it. Also, parsons of churches have the like privilege by the common law. (2 *Haw. c. 10, s. 11.*)

But all other persons, being above the age of twelve years, are bound to attend at such courts, in order to make inquiry of all common grievances, and also give security to the public for their good behaviour, by taking an oath to be faithful to the king, and to observe his laws, and also by incorporating themselves into some free pledge or tithing, which formerly signified a certain number of families living together in the same precinct, the masters whereof were every one of them mutually bound for each other, and punishable for the default of any member of any such family in not appearing to answer for himself on any accusation made against him. (2 *Haw. c. 10, s. 2.*)

Who are to appear at the torn.

If the defendant except not to an unqualified juror upon his arraignment, he is concluded by that omission. (2 *Hale, 70.*)

By 13 Edw. 1, st. 2, c. 13, the jury shall put their seals to their inquisitions.

By 1 Edw. 3, c. 17, indictments in the torn shall be by roll indented, one part to remain with the indictors, and the other with him that taketh the inquest. Indictments to be indented.

It seems to be settled at this day, that a distress is incident of common right to every fine and amerciamment in the torn; and that the offender's goods may be distrained in any lands within the precinct of the court, or in the highway; and that the goods distrained may be sold. But the bailiff must have a special warrant to make distress. (2 *Haw. c. 10, s. 25.*) Distress and sale.

Or the fine may be recovered by action of debt. (*Id. s. 31.*)

But no offence is cognizable in the torn, unless it arise since the holding of the last court. (*Id. s. 50.*) Within what time offences are cognizable in the torn.

It seems to be agreed, that a presentment in the torn of any offence within the jurisdiction of the court, being neither capital nor concerning any freehold, subjects the party to a fine or amerciamment, without any traverse. (*Id. s. 76.*) Traverse.

By *Magna Charta*, 9 Hen. 3, c. 17, the sheriff is restrained in his torn from hearing and determining indictments of felonies; yet the sheriffs did commonly make out process or precepts in nature of a *capias* to arrest the parties; but by 1 Edw. 4, c. 2, their power of making out process upon these indictments is taken away as well in cases of indictments of felony as other misdemeanors within their cognizance; but they are to deliver all such indictments and presentments to the next sessions, who are to make out process thereupon, and hear and determine them. (2 *Hale, 71.*) Indictment to be certified to the sessions.

And the estreats of the fines thereupon shall be enrolled, and by indenture be delivered to the sheriff, to the use of him that was sheriff at the time of the indictment so taken in the torn as aforesaid.

The constables of common right are to be chosen and sworn in the torn or leet. (2 *Haw. c. 10, s. 37.* See title "*Leet.*") Constables chosen in the torn.

## Towns Improvement.

THE duties of justices to be performed in relation to this subject consist of granting certificates, hearing appeals, and principally in enforcing penalties attached to the breaches of the provisions of the statutes.

These provisions are relative to the following particulars :—

10 & 11 Vict. c. 34 :—

- Sect. 20. Corrections made in schedule of special act. To be certified.
- Sects. 26, 30, and 46. As to sewers and drains constructed. Penalties.
- Sects. 47 to 56. As to paving and management of streets and highways. Penalties.
- Sects. 57 to 65. As to laying out new streets. Penalties.
- Sects. 71, 74. As to construction of doors, gates, cellars, and spouts. Penalties.
- Sects. 75, 76. As to dangerous buildings.
- Sects. 79 to 82. As to precautions during repairs. Penalties.
- Sects. 84 to 86. As to construction of works subject to approval. Appeal.
- Sects. 87 to 98. As to cleansing streets, &c. Penalties.
- Sects. 99 to 105. As to preventing nuisances. Penalties.
- Sect. 108. As to smoke. Penalties.
- Sect. 109. As to fire. Penalties.
- Sects. 110 to 115. As to ventilation, and cellar dwellings. Appeal.
- Sects. 116 to 118. As to lodging-houses. Penalties.
- Sects. 125 to 131. As to licensing slaughter-houses. Penalties.
- Sect. 136. As to public baths and washhouses. Penalties.
- Sects. 144, 145. As to execution of works by commissioners. Penalties.
- Sect. 153. As to tenants opposing execution of the act. Penalties.
- Sects. 172, 175, 176, 177. As to the form and valuation for making rates.
- Sects. 185 to 190. As to appeal against rates.
- Sects. 191 to 199. As to the recovery of rates.
- Sects. 200 to 208. As to making bye-laws. Penalties.
- Sects. 210 to 213. As to mode of recovering damages and penalties.
- Sects. 214, 215. As to affording access to special act. Penalties.

26 Vict. c. 13 :—

- Sects. 1 and 2. As to management and protection of public gardens and open spaces.
- Sect. 3. As to defraying expenses.
- Sects. 4 to 6. As to bye laws. Penalties.

Extent of act.

By “the Towns Improvement Clauses Act, 1847,” 10 & 11 Vict. c. 34, being an act for consolidating in one act certain provisions usually contained in acts for paving, draining, cleansing, lighting, and improving towns; it is enacted that this act shall extend only to such towns or districts in England or Ireland as shall be comprised in any act of parliament hereafter to be passed which shall declare that this act shall be incorporated therewith; and all the clauses of this act, save so far as they shall be expressly varied or excepted by any such act,

shall apply to the town or district which shall be comprised in such act, and to the commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other act which shall be incorporated therewith, form part of such act, and be construed therewith as forming one act.

10 & 11 Vict.  
c. 34.

And with respect to the construction of this act, whether incorporated in whole or in part with any other act, and of any act incorporated therewith, be it enacted as follows :

Interpretations in  
this act :

Sect. 2. The expression "the special act" used in this act shall be construed to mean any act which shall be hereafter passed for the improvement or regulation of any town or district, or of any class of towns or districts defined or comprised therein, and with which this act shall be incorporated : and the word "prescribed" used in this act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used ; and the expression "the commissioners" shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special act with powers for executing the purposes thereof.

"the special act :"

"prescribed :"

"the Com-  
missioners :"

Sect. 3. The following words and expressions in both this and the special act, and any act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,)

Interpretations in  
this and the  
special act :

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number :

Number :

Words importing the masculine gender shall include females :

Gender :

The word "person" shall include a corporation, whether aggregate or sole :

"Person :"

The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure :

"Lands :"

The word "street" shall extend to and include any road, square, court, alley, and thoroughfare within the limits of the special act :

"Street :"

The word "month" shall mean calendar month :

"Month :"

The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the County Palatine of Lancaster, and the Court of Pleas of the county of Durham :

"Superior  
courts :"

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :

"Oath :"

The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town :

"County :"

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises ; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together :

"Justice :"

"Two justices :"

The expression "quarter sessions" shall mean quarter sessions as defined in the special act, and if such expression be not there defined, shall mean the court of general or quarter sessions of the peace which shall be held in or at the place nearest to the district in which the matter arises requiring the cognizance of any such court, and having jurisdiction over such district :

"Quarter ses-  
sions ;"

10 & 11 Vict.  
c. 34.

"Owner:"

"Cattle."

Form in which  
portions of this  
act may be incor-  
porated with  
other acts.

Lands.

Errors and  
omissions in plans,  
&c. may be cor-  
rected by justices,  
who shall certify  
the same.

Certificate to be  
deposited.

Sewers.

Commissioners  
not to destroy  
existing sewers,  
&c., without pro-  
viding others.  
Penalty for  
neglect.

The word "owner," used with reference to any lands or buildings in respect of which any work is required to be done, or any rate to be paid, under this or the special act, shall mean the person for the time being entitled to receive, or who, if such lands or buildings were let to a tenant at rack rent, would be entitled to receive, the rack rent from the occupier thereof:

The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

Sect. 5. For the purpose of incorporating part only of this act with any act hereafter to be passed, it shall be enough to describe the clauses of this act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this act, with the exception of the clauses so described, shall be incorporated with such act; and thereupon all the clauses of this act so incorporated shall, save so far as they are expressly varied or excepted by such act, form part of such act, and such act shall be construed as if such clauses were set forth therein with reference to the matter to which such act relates.

Sects. 6 to 12 relate to the appointment and duties of officers.

Sects. 13 to 18 inclusive relate to providing surveys and plans.

And with respect to taking lands, and the compensation to be made by the commissioners for damage done by them in execution of the powers of this and the special act, be it enacted as follows:

Sect. 19. Provides that the taking of lands is to be subject to the provisions of this act and the Lands Clauses Consolidation Act, 1845.

Sect. 20. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, mentioned in any schedule to the special act, the commissioners, after giving ten days notice to the owners, lessees, and occupiers of the lands affected by such proposed correction, may apply to two justices for the correction thereof; and if it appear to such justices that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate, with the other documents to which it relates, shall be deposited with the clerk of the peace of the county in which the lands affected thereby are situated, and such certificate shall be kept by such clerk of the peace with the other documents to which it relates, and thereupon such schedule shall be deemed to be corrected according to such certificate; and the commissioners may take any lands in accordance with such certificate as if such omission, mis-statement, or wrong description had not been made.

Sect. 21 enacts that the commissioners are to make compensation for damage done, and in case of disagreement as to amount, that the same is to be determined in the manner provided by 7 & 8 Vict. c. 18.

Sects. 22 to 34 relate to making and maintaining the public sewers.

By sect. 26 it is provided that if any person, by means of any enlargement, alteration, or discontinuance of any sewer or other proceeding of the commissioners, be deprived of the use of any sewer or drain which such person was theretofore lawfully entitled to use, the commissioners shall provide some other sewer or drain equally effectual for such purpose; and if the commissioners refuse or do not within seven days next after notice in writing served upon them begin and thereupon diligently proceed to restore to its former effective state such drain or sewer, the use whereof has been affected by the acts of the commissioners, or to provide such other sewer or drain as aforesaid, they shall forfeit to the person aggrieved any sum not exceeding 40s. for every day after the expiration of such seven days

during which he is deprived of the use of the drain or sewer to which he was so entitled, and is not provided with such other drain or sewer as aforesaid.

10 & 11 Vict.  
c. 34.

By sect. 30 every person, not being employed for that purpose by the commissioners, who shall make any drain into any of the sewers or drains so vested in the commissioners shall forfeit to the commissioners a sum not exceeding 5*l.*, and the commissioners may cause such branch drain to be re-made as they think fit, and all the expense incurred thereby shall be paid by the person making such branch drain, and shall be recoverable by the commissioners as damages.

Penalty for making unauthorised drains.

Sects. 35 to 46 inclusive relate to the drainage of houses.

House drains.

By sect. 46, if any such drain, privy, or cesspool be on inspection found to have been constructed, after the passing of the special act, contrary to the directions and regulations of the commissioners, or contrary to the provisions of this or the special act, or if any person, without the consent of the commissioners, construct, rebuild, or unstop any drain, privy, or cesspool which has been ordered by them to be demolished or stopped up or not to be made, every person so doing shall be liable to a penalty not exceeding 5*l.*; and the commissioners may cause such amendment or alteration to be made in any such drain, privy, or cesspool as they think fit; and the expense attending any such amendment or alteration shall be paid by the person by whom such sewer was improperly constructed, rebuilt, or altered, and shall be recoverable from him as damages.

Penalty on persons making or altering drains, &c., contrary to the orders of the commissioners.

And with respect to paving and maintaining the streets, be it enacted as follows:

Paving.

Sect. 47. The management of all the streets which at the passing of the special act are or which thereafter become public highways, and the pavements and other materials, as well in the footways as carriageways, of such streets, and all buildings, materials, implements, and other things provided for the purposes of the said highways, by the surveyors of highways or by the commissioners, shall belong to the commissioners.

Management of streets vested in the commissioners.

Sect. 48. The commissioners, and none other, shall be the surveyors of all highways within the limits of the special act, and within those limits shall have all such powers and authorities, and be subject to all such liabilities, as any surveyors of highways are invested with or subject to by virtue of the laws for the time being in force; and the inhabitants of the district within the said limits shall not, in respect of any lands situate within the said district, be liable to the payment of any highway rate, grand jury cess, or other payment in respect of making and repairing roads within the other parts of the parish, township, barony, or place in which the said district or any part thereof is situate.

Commissioners to be surveyors of highways.

Sect. 49. The commissioners shall be deemed guilty of a misdemeanor for refusing or neglecting to repair any public highway within the limits of the special act, and shall be liable to be indicted for such misdemeanor in the same manner as the inhabitants thereof, or of any parish, township, or other district therein, were liable before the passing of the special act.

Commissioners liable to indictment for want of repairs.

Sect. 50. The trustees of any turnpike road shall not collect any toll on any road within the limits of the special act, or lay out any money thereon.

Road trustees not to collect tolls within limits of act.

Sect. 51. The commissioners may from time to time cause all or any of the streets under their management, or any part thereof respectively, to be paved, flagged, or otherwise made good, and the ground or soil thereof to be raised, lowered, or altered, in such manner and with such materials as they think fit; and they may also pave or make, with such materials as they think fit, any footways for the use of passengers in any such street, and cause such streets and footways to be repaired from time to time.

Power for the commissioners to pave public streets.



10 & 11 Vict.  
c. 34.

Commissioners  
may place fences  
to footways.

Where public  
streets have not  
heretofore been  
paved, commis-  
sioners may cause  
them to be paved  
at the expense of  
the occupiers of  
adjoining lands.

Future streets  
may be declared  
highways.

Commissioners  
upon completion  
of two-thirds of  
any street, may,  
upon application,  
require remaining  
one-third to be  
completed by  
owners of houses.

Sect. 52. The commissioners shall from time to time place such fences and posts on the side of the footways of the streets under their management as may be needed for the protection of passengers on such footways, and they may place posts in the carriageways of such streets, so as to make the crossing thereof less dangerous for foot passengers; and they shall from time to time repair any such fences or posts, or remove the same, or any obstructions to any such carriageway or footway, as they think fit.

Sect. 53. If any street, although a public highway at the passing of the special act, have not theretofore been well and sufficiently paved and flagged or otherwise made good, the commissioners may cause such street, or the parts thereof not so paved and flagged or otherwise made good, to be paved and flagged or otherwise made good, in such manner as they think fit, and the expenses incurred by the commissioners in respect thereof shall be repaid to them by the occupiers of the lands abutting on such street, or such parts thereof as have not been theretofore well and sufficiently paved and flagged, or otherwise made good, and such expenses shall be recoverable from such occupiers respectively as hereinafter provided with respect to private improvement expenses, and thereafter such street shall be repaired by the commissioners out of the rates levied under this or the special act.

Sect. 54. If any street, not being a public highway at the passing of the special act, be then or thereafter paved, flagged, or otherwise made good, to the satisfaction of the commissioners, then, on the application of the greater part in value of the occupiers of the houses and lands in such street, the commissioners shall, by writing, under their common seal if they be incorporated, or, if they be not incorporated, then under the hands of five of the commissioners, declare the same to be a public highway, and thereupon the said street shall become a public highway, and shall be thereafter repaired by the commissioners out of the rates levied under this and the special act; and such declaration shall be entered among the proceedings of the commissioners, and notice of such declaration shall be put up in some conspicuous place in or near such street.

Sect. 55. If any street, not being a public highway at the passing of the special act, be thereafter to the extent of two third parts thereof paved and flagged or otherwise made good to the satisfaction of the commissioners, then, on the application of the owners of the lands abutting on such parts of the said street as have been so made good, the commissioners may require the owners of the buildings or lands abutting on the remainder of the said street to pave and flag or otherwise make good to the satisfaction of the commissioners such remainder of the said street, or such parts thereof as front such last-mentioned buildings and lands, within a reasonable time, to be fixed by the commissioners: and if such remainder of the said street, or any such part thereof as aforesaid, be not made good as aforesaid within the time so fixed, the commissioners may cause the part not so made good to be made good, and the expenses which shall be incurred by the commissioners in respect thereof shall be repaid to them by the owners by whom such paying ought to have been done respectively; and such expenses, if not forthwith repaid by such owners, shall be recoverable from the occupiers of such buildings and lands as hereinafter provided with respect to private improvement expenses; and when the whole of the said street is paved and made good to the satisfaction of the commissioners, they shall, by writing, under their common seal if they be incorporated, or, if they be not incorporated, then under the hands of five of the commissioners, declare the same to be a public highway, and thereupon the said street shall become a public highway, and shall for ever afterwards be repaired by the commissioners, and such declaration shall be entered among the proceedings of the commissioners.

Sect. 56. Every person who wilfully displaces, takes up, or makes any alteration in the pavement, flags, or other materials of any street under the management of the commissioners, without their consent in writing, or without other lawful authority, shall be liable to a penalty not exceeding 5*l*., and also a further sum not exceeding 5*s*. for every square foot of the pavement, flags, or other materials of the street exceeding one square foot so displaced, taken up, or altered.

10 & 11 Vict.  
c. 34.

Penalty on persons altering pavements without the consent of the commissioners.

And with respect to laying out new streets, be it enacted as follows:—

New streets.

Sect. 57. Every person who intends to make or lay out any new street shall give notice thereof to the commissioners, in order that the level of such street may be fixed by the commissioners.

Notice of intention to lay out new streets to be given to commissioners.

Sect. 58. The level of every new street shall be fixed under the direction of the surveyor of the commissioners, subject to such right of appeal as hereafter mentioned; and the level so fixed, if not altered on appeal, shall be kept thereafter by every person raising any house or other building in such street.

Levels to be fixed by the surveyor to the commissioners.

Sect. 59. If the commissioners do not fix such level within six weeks from the time of the delivery of such notice as aforesaid, unless the fixing of such level be delayed by the appeal hereinafter provided, the person giving such notice may proceed to lay out the street at any level which will allow of compliance with the other provisions of this and the special act, as if such level had been fixed by the commissioners; and in such case every change of the level which the commissioners afterwards deem requisite, and the works consequent thereon, shall be made by the commissioners, and the expense thereof, and any damage which any person sustains in consequence of such alteration, shall be defrayed by them.

If the commissioners fail to fix the level, the party may proceed without.

Sect. 60. Every person who makes or lays out any such new street as aforesaid, without causing such notice to be given to the commissioners as aforesaid, shall be liable to defray all the expenses consequent upon any change of the level of the said street deemed requisite by the commissioners; and every person who in building any house or other building in such street does not keep the level fixed by the commissioners shall be liable to defray all the expenses consequent upon any change of the level of that part of the street on which such house or building abuts which the commissioners deem requisite.

Persons laying out streets without notice to be liable to the expenses of subsequent alterations of levels.

Sects. 61 and 62 relate to gas and water pipes.

Sect. 63. It shall not be lawful to make or lay out any new street unless the same be of the prescribed width, or, where no width is prescribed, unless the same, being a carriage road, be at least thirty feet wide, or, not being a carriage road, be at least twenty feet wide.

As to the width of new streets.

And with respect to naming the streets and numbering the houses, be it enacted as follows:

Naming streets.

Sect. 64. The commissioners shall from time to time cause the houses and buildings in all of any of the streets to be marked with numbers as they think fit, and shall cause to be put up or painted on a conspicuous part of some house, building, or place at or near each end, corner, or entrance of every such street the name by which such street is to be known: and every person who destroys, pulls down, or defaces any such number or name, or puts up any number or name different from the number or name put up by the commissioners, shall be liable to a penalty not exceeding 40*s*. for every such offence.

Houses to be numbered and streets named.

Sect. 65. The occupiers of houses and other buildings in the streets shall mark their houses with such numbers as the commissioners approve of, and shall renew such numbers as often as they become obliterated or defaced; and every such occupier who fails, within one week after notice for that purpose from the commissioners, to mark

Numbers of houses to be renewed by occupiers.

10 & 11 Vict.  
c. 34.

his house with a number approved of by the commissioners, or to renew such number when obliterated, shall be liable to a penalty not exceeding 40s. : and the commissioners shall cause such numbers to be marked or to be renewed, as the case may require, and the expense thereof shall be repaid to them by such occupier, and shall be recoverable as damages.

Improving streets.

Sects. 66 to 74 give powers for improving the line of the streets, and removing obstructions.

Doors in future to be made to open inwards.

By sect. 71, All doors, gates, and bars put up after the passing of the special act within the limits thereof, and which open upon any street, shall be hung or placed so as not to open outwards, except when, in the case of public buildings, the commissioners allow such doors, gates, or bars to be otherwise hung or placed; and if, except as aforesaid, any such door, gate, or bar be hung or placed so as to open outwards on any street, the occupier of such house, building, yard, or land shall, within eight days after notice from the commissioners to that effect, cause the same to be altered so as not to open outwards; and in case he neglect so to do, the commissioners may make such alteration, and the expenses of such alteration shall be paid to the commissioners by such occupier, and shall be recoverable from him as damages, and he shall, in addition, be liable to a penalty not exceeding 40 shillings.

Penalty.

Coverings for cellar doors to be made by occupier.

By sect. 73, When any opening is made in any pavement or footpath within the limits of the special act, as an entrance into any vault or cellar, a door or covering shall be made by the occupier of such vault or cellar, of iron or such other materials, and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar; and if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions of the commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty not exceeding 5l.

Penalty for neglect.

Waterspouts to be affixed to houses or buildings.

Sect. 74. The occupier of every house or building in, adjoining, or near to any street shall, within seven days next after service of an order of the commissioners for that purpose, put up and keep in good condition a shoot or trough of the whole length of such house or building, and shall connect the same either with a similar shoot on the adjoining house or with a pipe or trunk to be fixed to the front or side of such building from the roof to the ground, to carry the water from the roof thereof, in such manner that the water from such house, or any portico or projection therefrom, shall not fall upon the persons passing along the street, or flow over the footpath; and in default of compliance with any such order within the period aforesaid such occupier shall be liable to a penalty not exceeding 40 shillings for every day that he shall so make default.

Penalty.

Ruinous or dangerous buildings.

And with respect to ruinous or dangerous buildings, be it enacted as follows :

Ruinous or dangerous buildings to be taken down or secured by owners, &c.

Sect. 75. If any building or wall, or any thing affixed thereon, within the limits of the special act, be deemed by the surveyor of the commissioners to be in a ruinous state, and dangerous to passengers or to the occupiers of the neighbouring buildings, such surveyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner of such building or wall, if he be known and resident within the said limits, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down, secure, or repair such building, wall, or other thing, as the case shall require; and if such owner or occupier do not begin to repair, take down, or secure such

If owner, &c. neglect to repair,

building, wall, or other thing within the space of three days after any such notice has been so given or put up as aforesaid, and complete such repairs, or taking down or securing, as speedily as the nature of the case will admit, the said surveyor may make complaint thereof before two justices, and it shall be lawful for such justices to order the owner, or in his default the occupier (if any), of such building, wall, or other thing, to take down, rebuild, repair, or otherwise secure, to the satisfaction of such surveyor, the same, or such part thereof as appears to them to be in a dangerous state, within a time to be fixed by such justices; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the commissioners shall with all convenient speed cause all or so much of such building, wall, or other thing as shall be in a ruinous condition, and dangerous as aforesaid, to be taken down, repaired, rebuilt, or otherwise secured in such manner as shall be requisite; and all the expenses of putting up every such fence, and of taking down, repairing, rebuilding, or securing such building, wall, or other thing, shall be paid by the owner thereof.

10 & 11 Vict.  
c. 34.

commissioners may cause the same to be done, charging owner, &c. with the expenses.

Sect. 76. If such owner can be found within the limits of the special act, and if, on demand of the expenses aforesaid, he neglect or refuse to pay the same, then such expenses may be levied by distress, and any justice may issue his warrant accordingly.

The expenses to be levied by distress on the owner.

Sects. 77 and 78 apply to cases when the owner cannot be found within the said limits.

And with respect to precautions during the construction and repair of the sewers, streets, and houses, be it enacted as follows :

Precautions during repairs.

Sect. 79. The commissioners shall, during the construction or repair of any of the streets vested in them, and during the construction or repair of any sewers or drains, take proper precaution for guarding against accident, by shoreing-up and protecting the adjoining houses, and shall cause such bars or chains to be fixed across or in any of the streets, to prevent the passage of carriages and horses while such works are carried on, as to them shall seem proper; and the commissioners shall cause any sewer or drain or other works, during the construction or repair thereof by them, to be lighted and guarded during the night, so as to prevent accidents; and every person who takes down, alters, or removes any of the said bars or chains, or extinguishes any light, without the authority or consent of the commissioners, shall for every such offence be liable to a penalty not exceeding 5*l*.

Bars to be erected across streets while repairs or alterations are making, and lights placed at night.

Penalty.

Sect. 80. Every person intending to build or take down any building within the limits of the special act, or to cause the same to be so done, or to alter or repair the outward part of any such building, or to cause the same to be so done, where any street or footway will be obstructed or rendered inconvenient by means of such work, shall before beginning the same cause sufficient hoards or fences to be put up, in order to separate the building where such works are being carried on from the street, with a convenient platform and handrail, if there be room enough, to serve as a footway for passengers, outside of such hoard or fence, and shall continue such hoard or fence, with such platform and handrail as aforesaid, standing and in good condition, to the satisfaction of the commissioners, during such time as the public safety or convenience requires, and shall in all cases in which it is necessary, in order to prevent accidents, cause the same to be sufficiently lighted during the night; and every such person who fails to put up such fence or hoard, or platform with such handrail as aforesaid, or to continue the same respectively standing and in good condition as aforesaid during the time aforesaid, or who does not, while the said hoard or fence is standing, keep the same suffi-

Hoards to be set up during repairs.

Penalty.

10 & 11 Vict.  
c. 34.

Penalty for not  
lighting deposits  
of building ma-  
terials or excava-  
tions.

Penalty for con-  
tinuing deposits  
of building ma-  
terials or excava-  
tions an unreason-  
able time.

Objections to  
works.

Commissioners to  
give notice of new  
levels or sewers.

Meeting of com-  
missioners to hear  
objections in the  
presence of the  
inspector.

ciently lighted in the night, or who does not remove the same, when directed by the commissioners, within a reasonable time afterwards, shall for every such offence be liable to a penalty not exceeding 5*l*. and a further penalty not exceeding 40*s*. for every day while such default is continued.

Sect. 81. When any building materials, rubbish, or other things are laid, or any hole made, in any of the streets, whether the same be done by order of the commissioners or not, the person causing such materials or other things to be so laid, or such hole to be made, shall at his own expense cause a sufficient light to be fixed in a proper place upon or near the same, and continue such light every night from sun-setting to sun-rising while such materials or hole remain; and such person shall, at his own expense, cause such materials or other things and such hole to be sufficiently fenced and inclosed until such materials or other things are removed or the hole filled up or otherwise made secure; and every such person who fails so to light, fence, or inclose such materials or other things, or such hole, shall for every such offence be liable to a penalty not exceeding 5*l*., and a further penalty not exceeding 40*s*. for every day while such default is continued.

Sect. 82. In no case shall any such building materials or other things or such hole be allowed to remain for an unnecessary time, under a penalty not exceeding 5*l*. to be paid for every such offence by the person who causes such materials or other things to be laid or such hole to be made, and a further penalty not exceeding 40*s*. for every day during which such offence is continued after the conviction for such offence; and in any such case the proof that the time has not exceeded the necessary time shall be upon the person so causing such materials or other things to be laid, or causing such hole to be made.

Sect. 83 provides that dangerous places be repaired or inclosed.

And with respect to objections to the works to be constructed by or subject to the approval of the commissioners, be it enacted as follows:

Sect. 84. Twenty-eight days at the least before fixing the level of any street which has not become a public highway, or any street which has not been theretofore levelled or paved, and before making any sewer where none was before, or altering the course or level of or abandoning or stopping any sewer, the commissioners shall give notice of their intention by posting a printed or written notice in a conspicuous place at each end of every such street through or in which such work is to be undertaken, which notice shall set forth the name or situation of the street intended to be levelled or paved, and the names of the places through or near which it is intended that the new sewer shall pass, or the existing sewer be altered or stopped up, and also the places of the beginning and the end thereof, and shall refer to plans of such intended work, and shall specify a place where such plans may be seen, and a time when and place where all persons interested in such intended work may be heard thereupon; and they shall at the same time give to the inspector notice of the said intended work, and of the time and place appointed for hearing objections thereto.

Sect. 85. The commissioners shall meet at the time and place mentioned in the said notice, to consider, in the presence of the inspector, or of the surveyor of the commissioners, any objections made against such intended work, and all persons interested therein, or likely to be aggrieved thereby, shall be entitled to be heard before the commissioners at such meeting; and thereupon the commissioners may, with the concurrence of the inspector, if any inspector has been appointed and is present at such meeting, or in the absence of the inspector, or if no inspector have been appointed, then in their dis-

cretion, abandon or make such alterations in the said intended work as they judge fit; and no such work to which any objection is made at such meeting at which any such inspector shall be present shall be executed unless the inspector, or if no inspector have been appointed, then unless the surveyor of the commissioners, after the person making such objection or his agent has been heard, certify that the work in his judgment ought to be executed, nor shall such work be begun until the end of seven days after an order for the execution thereof has been duly made by the commissioners, and entered in their books.

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c. 34.

Sect. 86. Any person liable to pay or to contribute towards the expense of any of the works aforesaid, or otherwise aggrieved by any order of the commissioners relating thereto, may, at any time within seven days next after the making of any such order, give notice in writing to the commissioners that he intends to appeal against such order to the court of quarter sessions holden next after the expiration of ten days next after such notice, and along with such notice he shall give a statement in writing of the grounds of the appeal; and if within four days next after giving such notice the party enter into a recognizance before some justice, with two sufficient sureties, conditioned to try the appeal, and abide the order of the court, and pay such costs as shall be awarded by the court thereupon, the work so appealed against shall not be begun until after the judgment of the court upon such appeal; and such court, upon due proof of such notice and of such recognizance having been given and entered into, shall hear and determine the matter of the appeal, and shall make such order thereon, either confirming, quashing, or varying the same, and shall award such costs to either of the parties, as the court in its discretion thinks fit: provided always, that the appellant shall not be heard in support of such appeal unless such notice and statement have been given and such recognizance entered into as aforesaid, nor on the hearing of such appeal shall he go into evidence of any other grounds of appeal than those set forth in such statement as aforesaid.

Persons aggrieved by order of commissioners may appeal to quarter sessions.

And with respect to cleansing the streets, be it enacted as follows :  
Sect. 87. The commissioners shall cause all the streets, together with the foot pavements, from time to time to be properly swept and cleansed, and all dust and filth of every sort found thereon to be collected and removed, and shall cause all the dust, ashes, and rubbish to be carried away from the houses and tenements of the inhabitants of the town or district within the limits of the special act, at convenient hours and times, and shall cause the privies and cess-pools within the said town or district to be from time to time emptied and cleansed in a sufficient and proper manner: provided always, that the occupier of any house or tenement within the limits of the special act may keep and remove any such soil, ashes, or rubbish as shall be made on his own premises, and shall be kept for manure, so that the same be not a nuisance to the inhabitants residing near such premises, and that the same be removed at such times and in such manner as shall be approved of by the commissioners.

Cleansing streets.

Commissioners to cause streets to be cleansed, and dust and ashes to be removed from the houses.

Sect. 88. The occupiers of buildings and lands within or adjoining the streets shall once in every day (Sundays excepted), before eight of the clock in the forenoon of each day, cause to be swept and cleansed the footways and pavements in front or at the side of their respective buildings and lands; and every such occupier making default herein shall for every such offence be liable to a penalty not exceeding 5s.; and for the purpose aforesaid, when any house shall be let in separate apartments, the person letting such apartments shall be deemed the occupier.

Occupiers to cause footways to be swept.

Penalty for neglect.

Sect. 89. The commissioners may compound, for such time as they

Commissioners

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may compound  
for sweeping foot-  
ways.

Dust boxes to be  
erected by Com-  
missioners.

Penalty.

Commissioners to  
appoint scaven-  
gers.

Penalty.

Penalty for ob-  
structing scaven-  
gers.

Penalty on persons  
other than scaven-  
gers removing  
dirt.

Penalty for con-  
veying offensive  
matter at im-  
proper times.

think fit, with any person liable to sweep or clean any footway under the provisions of this or the special act, for sweeping and cleaning the same in the manner directed by this or the special act.

Sects. 90 and 91 relate to dealing with the collected dust, &c.

Sect. 92. The commissioners, if they think fit so to do, may cause any number of movable or fixed dust boxes or other conveniences wherein dust and ashes may be deposited until removed and carried away, to be provided and placed in such of the streets as they shall judge necessary, and may require the occupiers of houses or tenements within such streets to cause all their dust and ashes to be deposited daily in the said dust boxes or other conveniences; and every person who after such dust boxes or conveniences have been so provided shall deposit or cause or permit to be deposited any ashes or dust in any part of any street, except in some of the said dust boxes or other conveniences, and every person who shall lay or cause to be laid any dirt, dung, or other filth in any part of any street, shall for every such offence forfeit and pay a sum not exceeding 10s.

Sects. 93 and 94 provide for public conveniences.

Sect. 95. The commissioners shall appoint and employ a sufficient number of scavengers, or contract with any company or other person to employ scavengers, for sweeping, cleansing, and watering the streets, and for removing all dust, ashes, rubbish, and filth therefrom, and from the houses and tenements therein, and for emptying privies and cesspools, in the manner by this or the special act directed; and such scavengers shall, on such days and at such hours, and in such manner as the commissioners from time to time appoint, sufficiently execute all such works and duties as they have respectively contracted or been employed to perform; and every such contractor who fails to sweep and properly cleanse or water any street which he has contracted to sweep, cleanse, or water, or who fails to clean out and empty any privy, cesspool, or sewer which he has contracted to clean out and empty, at the time and in the manner appointed by the commissioners, or to collect or remove any dirt, ashes, or rubbish which he has contracted to remove at the time and in the manner prescribed by the commissioners for that purpose, or who lays any of such soil, dust, ashes, rubbish, or filth in any other place than such as are appointed by the commissioners for that purpose, shall for every such offence be liable to a penalty not exceeding 5*l*.

Sect. 96. Every occupier of any building or land within the said limits, and every other person, who refuses to permit the said scavengers to remove such dirt, ashes, or rubbish as by this or the special act they are authorised to do, or who obstructs the said scavengers in the performance of their duty, shall for every such offence be liable to a penalty not exceeding 5*l*.

Sect. 97. Every person, other than the person employed by the commissioners, or by some person contracting with the commissioners for that purpose, who collects or carries away any night soil, dust, ashes, rubbish, or filth by this or the special act directed to be removed by persons employed by the commissioners from any street or public place within the limits of the special act, shall be liable to a penalty not exceeding 40s. for every such offence.

Sect. 98. The commissioners may from time to time fix the hours within which only it shall be lawful to empty privies or remove offensive matter within the limits of the special act; and when the commissioners have fixed such hours, and given public notice thereof, every person who within the limits of the special act empties or begins to empty any privy, or removes along any thoroughfare within the said limits any offensive matter, at any time except within the hours so fixed, and also every person who at any time, whether such hours have been fixed by the commissioners or not, uses for any such purpose any cart or carriage not having a covering proper for preventing the escape

of the contents of such cart, or of the stench thereof, or who wilfully slops or spills any such offensive matter in the removal thereof, or who does not carefully sweep and clean every place in which any such offensive matter has been placed, or unavoidably slopped or spilled, shall be liable to a penalty not exceeding 40s., and in default of the apprehension of the actual offender the driver or person having the care of the cart or carriage employed for any such purpose shall be deemed to be the offender.

10 & 11 Vict.  
c. 34.

And with respect to the prevention of nuisances, be it enacted as follows:

Sect. 99. No person shall suffer any waste or stagnant water to remain in any cellar or other place within any house belonging to or occupied by him within the limits of the special act, so as to be a nuisance; and every person who so suffers any such water to remain for forty-eight hours after receiving notice from the commissioners to remove the same, and every person who allows the contents of any privy or cesspool to overflow or soak therefrom, to the annoyance of the occupiers of any adjoining property, shall for every such offence be liable to a penalty not exceeding 40s. and to a further penalty not exceeding 5s. for every day during which such nuisance continues; and the commissioners may drain and cleanse out any stagnant pools, ditches, or ponds of water within the limits of the special act, and abate any such nuisance as aforesaid, and for that purpose may enter, by their officers and workmen into and upon any building or land within the said limits at all reasonable times, and do all necessary acts for any of the purposes aforesaid: and the expenses incurred thereby shall be paid by the person committing such offence, or occupying the building or land whence such annoyance proceeds, and if there be no occupier, by the owner of such building or land, and shall be recoverable as damages.

Stagnant pools of water and other annoyances to be removed.

Penalty.

Sects. 100 and 101 provide for the removal of accumulations of dung, &c.

Sect. 102. If at any time the officer of health, or, if for the time being there be no officer of health, any two surgeons or physicians, or one surgeon and one physician, residing within the said limits, certify under his or their hands to the commissioners that any house or part of any house or building within the limits of the special act is in such a filthy or unwholesome condition that the health of the inmates or of the neighbours is thereby affected or endangered, or that the whitewashing, cleansing, or purifying of any house or building, or any part thereof, would tend to prevent or check infectious or contagious disease therein, or that any drain, privy, or cesspool is in such a defective state that the health of the neighbours is thereby affected or endangered, the commissioners shall order the occupier of such house, or part thereof, to whitewash, cleanse, and purify the same, and the owner of such drain, privy, or cesspool to amend the condition thereof, in such manner and within such time as the commissioners deem reasonable; and if such occupier or owner do not comply with such order he shall be liable to a penalty not exceeding 10s. for every day's neglect thereof; and in such case the commissioners may cause such house or any part thereof to be whitewashed, cleansed, and purified, or the condition of such drain, privy, or cesspool to be amended, and may recover the expense thereof from such occupier or owner in the same manner as damages.

Houses to be whitewashed and purified, on certificate of officer of health, &c.

Penalty.

Sect. 103. No coffin containing a corpse shall be buried in any grave within the limits of the special act, not being a vault or catacomb, without at least thirty inches of soil between the ordinary surface of such burial ground and the upper side of the coffin; and if the person having the preparation or the immediate charge of the preparation of the grave to receive such coffin permit the coffin to be buried in such grave, or if the person having the control of the burial ground know-

No interment in any grave without leaving two feet six inches clear of soil above the coffin.



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c. 34.

Penalty.

Justices may order  
nuisances to be  
abated.

ingly permit any coffin to be buried in any grave in which there is not left after the burial thereof thirty inches at the least of soil, measuring from the ordinary surface of such burial ground to the upper side of the coffin, the person having the immediate charge of the preparation of the grave, and the person having the control of the burial ground in which such burial is made, shall for every such offence be liable to a penalty not exceeding 5*l*.

Sect. 104. If any candle-house, melting-house, melting-place, or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling or crushing bones, or any pigstye, necessary house, dunghill, manure heap, or any manufactory, building, or place of business within the limits of the special act, be at any time certified to the commissioners by the inspector of nuisances or officer of health, or if for the time being there be no inspector of nuisances or officer of health, by any two surgeons or physicians, or one surgeon and one physician, to be a nuisance or injurious to the health of the inhabitants, the commissioners shall direct complaint to be made before two justices; and any justice may summon before any two justices the person by or on whose behalf the work complained of is carried on, and such justices shall inquire into such complaint, and they may, by an order in writing under their hands, order such person to discontinue or remedy the nuisance within such time as to them shall appear expedient: provided always, that if it appear to such justices that in carrying on any business complained of the best means then known to be available for mitigating the nuisance or the injurious effects of such business have not been adopted, they may suspend their final determination, upon condition that the person so complained against shall undertake to adopt within a reasonable time such means as the said justices shall judge to be practicable and order to be carried into effect for mitigating or preventing the injurious effects of such business.

Penalty for disobedience of  
orders of justices.

Sect. 105. If any such nuisance, or the cause of any such injurious effects as aforesaid, be not discontinued or remedied within such time as shall be ordered by the said justices, the person by or on whose behalf the business causing such nuisance is carried on shall be liable to a penalty not exceeding 5*l*. for every day during which such nuisance shall be continued or unremedied after the expiration of such time as aforesaid: provided always, that when any person who thinks himself aggrieved by any such order shall, according to the provisions of this or the special act, appeal against any such order, such person shall not be liable to discontinue or remedy the nuisance or cause of the injurious effects mentioned therein, or to pay any penalty, until after the expiration of five days after the determination of such appeal and the confirmation of such order, unless such appeal cease to be prosecuted.

Smoke.

And with respect to the prevention of smoke, be it enacted as follows:

Fireplaces of factories, &c., to consume their own smoke.

Sect. 108. Every fireplace or furnace constructed after the passing of the special act, in order to be used within the limits of such act in the working of engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, gaswork, or in any manufactory whatsoever, (although a steam engine be not used or employed therein,) shall be so constructed as to consume the smoke arising from the combustibles used in such fireplace or furnace; and every such fireplace or furnace existing within the said limits at the date of the passing of the special act, used for the purposes aforesaid, not so constructed as to consume the smoke arising from such fireplace or furnace, shall within the prescribed period, or if no period be prescribed, then within two years after the passing of the special act, be so altered in its construction as to consume such smoke; and if after such period any person use for any of the purposes aforesaid any fireplace

Penalty.

or furnace not so constructed as aforesaid, or if at any time any person use any such fireplace or furnace constructed after the passing of the special act, and not so constructed as aforesaid, or so negligently use any such fireplace or furnace as not to consume the smoke arising from the combustibles used therein, every person so offending shall be liable to a penalty of 40s. for every day during any part of which such furnace or fireplace shall be so used and continued after one month's notice in writing shall have been given to the owner or occupier of such furnace or fireplace by the commissioners to remedy or discontinue the use of the same.

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c. 34.

And with respect to the construction of houses for prevention of fire, Fire.  
be it enacted as follows:

Sect. 109. The party walls of all buildings erected after the passing of the special act within the limits thereof shall be carried through and above the roof, to form a parapet of not less than twelve inches in height, measured at right angles with the slope of the roof, above the covering of the roof of the highest building to which such party walls belong, and all such party walls, and the external walls of all buildings, erected after the passing of the special act, in or near any street, or within the curtilage of any house adjoining any street, shall be constructed of incombustible materials, and the coverings of the roof thereof shall not, without the previous consent in writing of the commissioners, be constructed of combustible materials; and it shall not be lawful for the owner of any building within the limits of the special act, having at the passing of the special act a roof covered with thatch or other combustible material, and contiguous to or adjoining to any other building, to suffer such covering to such roof to remain for a longer period than seven years after the passing of the special act, unless with the consent in writing of the commissioners; and every person who shall erect any building, or cover any roof, or suffer the covering of any roof to continue, contrary to the provision herein contained, and who shall not remove or alter the same within one month after notice given to him for that purpose by the commissioners, shall be liable to a penalty not exceeding 1*l*. for every day that such building or covering to such roof shall so continue.

Party walls to be carried up through the roof.

Walls of buildings and coverings of roofs to be made of incombustible materials.

Penalty.

And with respect to supplying buildings with fresh air, be it enacted as follows: Ventilation.

Sect. 110. Before beginning to build any building intended to be used as a church, chapel, or school, or a place of public amusement or entertainment, or for holding large numbers of people for any purpose whatsoever, within the limits of the special act, the person intending to build the same shall give fourteen days' notice in writing to the commissioners, and shall accompany such notice with a plan and description of the manner proposed for its construction, with respect to the means of supplying fresh air to such building; and no person shall begin to build such building until the manner proposed for its construction, with respect to the means for supplying fresh air, have been approved of by the commissioners; and in default of sending such notice, or if any such building be erected without such approval, the commissioners may cause such building, or such part of it as they consider necessary, to be pulled down or altered, at the expense of the owner, and any expense incurred by the commissioners in so doing may be recovered as herein-before provided with respect to ruinous or dangerous buildings taken down or repaired by the commissioners.

Regulating construction of buildings intended as places for public meetings.

No person to begin to build until plan has been approved by commissioners.

Sect. 111. Provided always, that if the commissioners fail to signify in writing their approval or disapproval of the manner of construction of such building, with respect to the means of supplying fresh air shown on such plan and description as aforesaid, within fourteen days after receiving such notice, accompanied by such plan and description, the person giving such notice may, notwithstanding any

If commissioners fail to signify their approval of plan within fourteen days, party may proceed to build.

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Persons may  
appeal against  
determination of  
commissioners.

Cellars in courts  
not to be occupied  
as dwellings after  
letting prohibited.

No cellars under  
the height of seven  
feet from the floor  
to the ceiling to  
be let as dwell-  
ings.

Penalty on letting  
such cellars as  
dwelling places.

Lodging houses.  
For the regulation  
and inspection of  
lodging houses.

Commissioners to

thing herein contained, proceed to build the building therein referred to in the manner shown on such plan and description; provided that such building be otherwise in accordance with the provisions of this act and the special act.

Sect. 112. Provided also, that if the person so intending to build be dissatisfied with the determination of the commissioners as to the said proposed manner of construction, he shall have the same right of appeal against the determination of the commissioners, and such appeal shall be followed by the same incidents, as herein-before provided in the case of appeals against any order of the commissioners with respect to works to be constructed by or subject to the approval of the commissioners.

Sect. 113. It shall not be lawful to let separately, except as a warehouse or storehouse, or to suffer to be occupied as a dwelling place, any cellar under any house in any court within the limits of the special act, after the commissioners have given notice to the owners thereof that the letting of cellars as dwelling places in such court is prohibited from that time forth; and it shall be the duty of the commissioners to issue such notices from time to time, as soon as is convenient, until such notice has been given with respect to every court within the limits of the special act.

Sect. 114. It shall not be lawful to let separately, except as a warehouse or storehouse, or to suffer to be occupied as a dwelling place, any cellar or room under any house within the said limits, although not situated in a court, which cellar or room shall be less in height from the floor to the ceiling than seven feet, or which shall be less than one third of its height above the level of the street or ground adjoining the same, or otherwise shall not have two feet at least of its height from the floor to the ceiling above the said level, with an open area of two feet wide from the level of the floor of such cellar or room up to the level of the said street or ground, or which shall not have appurtenant thereto the use of a water-closet or privy and ashpit, according to the enactment herein contained, or which shall not also have a glazed window made to open to the full extent of the half thereof, the area of which is not less than six feet clear of the frame, and a fireplace, with a chimney or flue, or which cellar, being an inner or back cellar let or occupied along with a front cellar as part of the same letting or occupation, has not a ventilating flue, (unless such inner or back cellar shall be part of a house built before the passing of the special act,) or which shall not be well and effectually drained by means of a drain the bottom of which is one foot at least below the level of the floor of such cellar or room.

Sect. 115. Every person who lets separately (except as aforesaid) or who knowingly suffers to be occupied for hire, as a dwelling place, any cellar or room within the limits of the special act, contrary to the provisions of this and the special act, shall be liable to a penalty not exceeding 20s., and a further penalty not exceeding 5s. for every day during which such cellar or room is so occupied, after conviction of the first offence.

And with respect to lodging houses, be it enacted as follows:

Sect. 116. It shall not be lawful to keep or use as a public lodging house within the limits of the special act any house, not being a licensed victualling house, which shall be rated to the relief of the poor on a less sum than ten pounds, nor in any case unless such house shall have been registered as a lodging house in a book to be kept by the commissioners for that purpose; and every house shall be deemed a public lodging house within the meaning of this act in which persons are harboured or lodged for hire for a single night, or for less than a week at one time, or any part of which is let for any term less than a week.

Sect. 117. The commissioners shall cause a register to be kept in

which shall be entered the names of all such persons as apply to have the houses occupied by them registered as lodging houses, and the situations of such houses; and the commissioners shall from time to time fix the number of lodgers who may be received into each such lodging house, and make rules for promoting cleanliness and ventilation in such lodging house; and they shall order that a ticket containing the number of lodgers allowed to be received into the house, and a table of rules for promoting cleanliness and ventilation, shall be hung up or placed in a conspicuous part of each room into which lodgers are received; and the keepers of all such lodging houses shall at all times observe the said rules, and give access to such lodging houses, when required by any persons appointed by the commissioners, for the purpose of inspection thereof, or for the purpose of performing therein any disinfecting process which the commissioners may order.

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keep a register of lodging house keepers, and make rules for promoting cleanliness and ventilation.

Sect. 118. Every person who shall keep any lodging house, and receive lodgers therein, without such lodging house having been duly registered, or who shall receive into the same more lodgers than shall be allowed by the commissioners, or who shall fail to keep such ticket or such table of rules as aforesaid hung up or displayed as required by the commissioners, or who shall neglect to cause such rules to be observed in any such lodging house, or who shall refuse to admit to such lodging house at all reasonable times any person appointed by the commissioners for any of the purposes aforesaid, or who shall wilfully obstruct any such person in performing any disinfecting process therein which the commissioners may order, shall be liable to a penalty not exceeding 40s. for each such offence.

Penalty on lodging house keepers not complying with the provisions of the act.

Sects. 119 to 124 relate to supplying gas and water.

And with respect to slaughter-houses, be it enacted as follows:

Sect. 125. The commissioners may license such slaughter-houses and knackers' yards as they from time to time think proper for slaughtering cattle within the limits of the special act.

Slaughter-houses.

Commissioners may license slaughter-houses, &c.

Sect. 126. No place shall be used or occupied as a slaughter-house or knacker's yard within the said limits which was not in such use and occupation at the time of the passing of the special act, and has so continued ever since, unless and until a licence for the erection thereof, or for the use and occupation thereof as a slaughter-house or knacker's yard, have been obtained from the commissioners; and every person who, without having first obtained such licence as aforesaid, uses as a slaughter-house or knacker's yard any place within the said limits not used as such at the passing of the special act, and so continued to be used ever since, shall for each offence be liable to a penalty not exceeding 5*l.*, and a like penalty for every day after the conviction for such offence upon which the said offence is continued.

No new slaughter-houses in future to be erected without a licence.

Penalty.

Sect. 127. Every place within the limits of the special act which shall be used as a slaughter-house or knacker's yard shall, within three months after the passing of such act, be registered by the owner or occupier thereof at the office of the commissioners, and on application to the commissioners for that purpose, the commissioners shall cause every such slaughter-house or knacker's yard to be registered in a book to be kept by them for that purpose; and every person who after the expiration of the said three months, and after one week's notice of this provision from the commissioners, uses or suffers to be used any such place as a slaughter-house or knacker's yard, without its being so registered, shall be liable to a penalty not exceeding 5*l.* for such offence, and a penalty not exceeding 10*s.* for every day after the first day during which such place shall be used as a slaughter-house or knacker's yard without having been so registered.

Existing slaughter-houses, &c., to be registered.

Penalty.

Sect. 128. The commissioners shall from time to time, by bye-laws, to be made and confirmed in the manner hereinafter provided, make regulations for the licensing, registering, and inspection of the said slaughter-houses and knackers' yards, and preventing cruelty therein,

Commissioners may make bye-laws for regulation of slaughter-houses, &c.

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Justice may suspend licence of slaughter-houses, &c., in addition to penalty imposed.

Penalty for slaughtering cattle during suspension of licence, &c.

Officers may enter and inspect slaughter-houses, &c.

and for keeping the same in a cleanly and proper state, and for removing filth at least once in every twenty-four hours, and requiring them to be provided with a sufficient supply of water, and they may impose pecuniary penalties on persons breaking such bye-laws: provided that no such penalty exceed for any one offence the sum of 5*l.*, and in the case of a continuing nuisance the sum of 10*s.* for every day during which such nuisance shall be continued after the conviction for the first offence.

Sect. 129. The justices before whom any person is convicted of killing or dressing any cattle contrary to the provisions of this or the special act, or of the non-observance of any of the bye-laws or regulations made by virtue of this or the special act, in addition to the penalty imposed on such person under the authority of this or the special act, may suspend for any period not exceeding two months the licence granted to such person under this or the special act, or in case such person be the owner or proprietor of any registered slaughter-house or knacker's yard, may forbid for any period not exceeding two months the slaughtering of cattle therein; and such justices, upon the conviction of any person for a second or other subsequent like offence, may, in addition to the penalty imposed under the authority of this or the special act, declare the licence granted under this or the special act revoked, or, if such person be the owner or proprietor of any registered slaughter-house, may forbid absolutely the slaughtering of cattle therein; and whenever the licence of any such person is revoked as aforesaid, or whenever the slaughtering of cattle in any registered slaughter-house or knacker's yard is absolutely forbidden as aforesaid, the commissioners may refuse to grant any licence whatever to the person whose licence has been so revoked, or on account of whose default the slaughtering of cattle in any registered slaughter-house has been forbidden.

Sect. 130. Every person who during the period for which any such licence is suspended, or after the same is revoked as aforesaid, slaughters cattle in the slaughter-house or knacker's yard to which such licence relates, or otherwise uses such slaughter-house or knacker's yard, or allows the same to be used as a slaughter-house or knacker's yard, and every person who during the period that the slaughtering of cattle in any such registered slaughter-house or knacker's yard is forbidden as aforesaid, or after such slaughtering has been absolutely forbidden therein, slaughters any cattle in any such registered slaughter-house, shall be liable to a penalty not exceeding 5*l.* for such offence, and a further penalty of 5*l.* for every day on which any such offence is committed after the conviction for the first offence.

Sect. 131. The inspector of nuisances, the officer of health, or any other officer appointed by the commissioners for that purpose, may at all reasonable times, with or without assistants, enter into and inspect any building or place whatsoever within the said limits kept or used for the sale of butchers' meat, or for slaughtering cattle, and examine whether any cattle, or the carcase of any such cattle, is deposited there, and in case such officer shall find any cattle, or the carcase or part of the carcase of any beast, which appears unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons; and in case upon such inspection and examination, such cattle, carcase, or part of a carcase be found to be unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man; and such justice may adjudge the person to whom such cattle, carcase, or part of a carcase belongs, or in whose custody the same is found, to pay a penalty not exceeding 10*l.* for every such animal or carcase or part of a carcase so found; and the owner or occupier of any building

or place kept or used for the sale of butchers' meat, or for slaughtering cattle, and every other person, who obstructs or hinders such inspector or other officer from entering into and inspecting the same, and examining, seizing, or carrying away any such animal or carcase or part of a carcase so appearing to be unfit for the food of man, shall be liable to a penalty not exceeding 5*l*. for each offence.

10 & 11 Vict.  
c. 34.

Sects. 132 *et seq.*, relate to things to be done by the commissioners by special order only.

By sect. 136, the commissioners may from time to time by special order as herein defined, but not otherwise, purchase, rent, or otherwise provide, either within the limits of the special act, or at a reasonable distance therefrom, suitable and convenient land and buildings in a situation and according to plans to be approved of by the inspector, to be used for public baths and washhouses, and public open bathing places and public drying grounds, for the use and accommodation of the inhabitants within the limits of the special act, in washing and drying clothes and other articles, and may fit up the same respectively with all requisite and proper conveniences, and from time to time enlarge, renew, and repair the same respectively, and afford the use thereof respectively to such inhabitants at such reasonable charges, and under and subject to such regulations, as the commissioners may deem expedient; and every person who offends against any such regulations shall be liable to a penalty not exceeding 40*s*. for every offence.

Public bathing  
places and drying  
grounds.

Penalty.

And with respect to entry by the commissioners or their officers in execution of this or the special act, be it enacted as follows :

Sect. 144. The commissioners shall, for the purposes of this or the special act, have power by themselves or their officers to enter at all reasonable hours in the day time into and upon any buildings or lands within the limits of the special act, as well for the purpose of inspection as for the purpose of executing any work authorised to be executed by them under this or the special act, or any act incorporated therewith, without being liable to any legal proceedings on account thereof: Provided always, that, except when herein or in the special act it is otherwise provided, the commissioners or their officers shall not make any such entry, unless with the consent of the occupier, until after the expiration of twenty-four hours notice for that purpose given to the occupier.

Execution of  
works by com-  
missioners.

Commissioners  
empowered to  
enter upon lands  
for the purposes of  
this act.

Sect. 145. Every person who shall at any time obstruct the commissioners or any person employed by them in the performance of any thing which they are respectively empowered or required to do by this or the special act, or any act to be incorporated therewith, shall be liable to a penalty not exceeding 5*l*.

Penalty on per-  
sons obstructing  
commissioners in  
their duty.

Sect. 146 *et seq.*, relate to ensuring the execution of the works by this or the special act required to be done by the owners or occupiers of houses or lands.

Sect. 153. If the occupier of any buildings or lands within the limits of the special act prevent the owner thereof from carrying into effect in respect of such buildings or lands any of the provisions of this or the special act, or of any act incorporated therewith, after notice of his intention so to do has been given by the owner to such occupier, any justice, upon proof thereof, may make an order in writing requiring such occupier to permit the owner to execute all such works with respect to such buildings or lands as may be necessary for carrying into effect the provisions of this and the special act, or of any act incorporated therewith; and if after the expiration of ten days from the date of such order such occupier continue to refuse to permit such owner to execute such works, such occupier shall for every day during which he so continues to refuse be liable to a penalty not exceeding 5*l*., and every such owner during the continuance of such refusal shall be discharged from any penalties to which he might other-

Proceedings in  
case of tenants  
opposing the  
execution of this  
act.

Penalty.

10 & 11 Vict.  
c. 34.

wise have become liable by reason of his default in executing such works.

Sects. 156 to 166 regulate rates made for sewers, drains, and private improvements.

Sects. 167 *et seq.* relate to the manner of making rates authorised by this or the special act.

Form of rate.

Sect. 172. Every such rate shall be fairly transcribed in a book to be kept for that purpose, and may be in the form given in the schedule (A.) annexed to this act, or as near thereto as the circumstances of the case will admit of; and every such rate shall contain an account of every particular set forth at the head of the respective columns so far as the same can be ascertained; and every such rate shall be signed by not less than six of the commissioners.

Value of property to be ascertained according to poor rate.

Sect. 175. The annual value of all property rateable under this or the special act shall be ascertained according to the next preceding assessment for the relief of the poor within the limits of the special act, except in such cases as are herein-after mentioned.

If poor rate an unfair criterion, a valuation to be made.

Sect. 176. Provided always, that if at any time the rate for the relief of the poor within the limits of the special act be in the judgment of the commissioners an unfair criterion by which the said rates should be made, they may cause a valuation to be made of all the rateable property within the limits of the special act, or of any such separate district as aforesaid, by some competent person appointed by them for that purpose, and the rates made by the commissioners for the purposes of this act shall be made upon such valuation; and in every such valuation the property rateable shall be computed at its net annual value, as defined by an act made in the seventh year of his late Majesty, intituled "An Act to regulate Parochial Assessments," or any other act for the time being in force for regulating parochial assessment.

6 & 7 W. 4, c. 96.

Person appointed a valuer to make a declaration before acting.

Sect. 177. Before any such valuation shall be made the person appointed to make it shall make and subscribe a solemn declaration to make such valuation fairly and impartially according to the best of his judgment, and an entry or minute shall be made in the book of proceedings of the commissioners of the making and subscribing of such declaration, and of the date thereof, and any justice to whom application is made for that purpose shall administer such declaration.

Appeal.

And with respect to the appeal to be made against any rate, be it enacted as follows:

Persons aggrieved may appeal to petty sessions on the ground of incorrectness, &c., of valuation.

Sect. 185. If any person think himself aggrieved by any rate on the ground of inequality, unfairness, or incorrectness in the valuation of any rateable property included therein, or in the amount assessed thereon, he may at any time within one month after such rate is made appeal to the justices at any special sessions holden for the division within which the rateable property is situated for the purpose of considering appeals against the poor rates, or in Ireland may appeal to the justices of the petty sessions of the district, or to the justices acting for the district, within which the rateable property is situated; but no such appeal shall be entertained by such justices unless seven days notice in writing of such appeal be given by the aggrieved party to the commissioners; and at the sessions for which such notice is given, or any adjournment thereof, the justices there present shall hear and determine all objections to any such rate on the ground of inequality, unfairness, or incorrectness in the valuation of any property included therein, or in the amount assessed thereon, of which notice has been so given, but no other objection; and their decision shall be final, unless the party impugning such decision, within fourteen days after the same is made, give notice in writing to the other party of his intention to appeal against such decision,

Their decision to be final unless appealed from to quarter sessions.

stating in such notice the nature and grounds of such appeal, and within five days after giving such notice enter into a recognizance before some justice of the peace, with sufficient sureties conditioned to try such appeal at the then next quarter sessions at which the same can be tried, and to abide the order of and pay such costs as shall be awarded by the court at such sessions, or any adjournment thereof.

10 & 11 Vict.  
c. 34.

Sect. 186. If any person think himself aggrieved by any rate made under the authority of this or the special act, or by any matters included in or omitted from the same, he may, at any time within one month after the same is made, give notice of his intention to appeal to the next quarter sessions holden not less than fourteen days after such notice; but no such appeal shall be entertained at such quarter sessions unless fourteen days notice in writing of such appeal stating the nature and grounds thereof be given by the aggrieved party to the commissioners: Provided always that no such notice of appeal shall prevent the issuing of the warrant of distress for recovery of any such rate as herein-after provided, or the execution thereof.

Parties may appeal to the quarter sessions against a rate.

Sect. 187. The court shall hear and determine the appeal in a summary way at the quarter sessions for which any such notice of appeal is given, or at the following sessions, when the court thinks fit to adjourn the appeal to the following sessions, and the decision of the court shall be final and conclusive on all parties.

Quarter sessions to hear appeal, whose decision shall be final.

Sect. 188. No order of the said justices shall be of any force pending any appeal touching the same subject matter to the court of quarter sessions having jurisdiction to try such appeal, or in opposition to the order of any such court on such appeal.

No order of special sessions to be in force pending appeal.

Sect. 189. The said justices and the court of quarter sessions respectively shall in any such appeal as aforesaid have the same powers of amending or quashing the rate in respect of which the appeal is made as are by law vested in courts of quarter sessions for amending or quashing the rates for the relief of the poor within their jurisdiction upon appeals against such rates, and shall likewise have respectively, in any appeal against any rate made under the authority of this or the special act, the same powers of awarding costs to be paid by or to any of the parties to the appeal, and of recovering such costs, as are now vested in them respectively for awarding and recovering costs in an appeal against any rate for the relief of the poor within their jurisdiction: Provided always, that if the said justices or court shall quash the rate in respect of which the appeal is made, then, notwithstanding the quashing of such rate, all sums of money charged by such rate on any person charged by such rate may, if the justices or court so order, be levied by such means and in the same manner as if no appeal had been made against such rate; and the money which any person charged on such rate pays, or which is recovered from him, shall be taken as a payment on account of the next effective rate made on him for the same purposes for which the rate so quashed was made.

On appeal, the quarter sessions and petty sessions to have same power of amending and quashing rates, and of awarding costs, as in appeals against poor rates.

Sect. 190. No order of the said justices or court of quarter sessions upon any such appeal as aforesaid shall be removed by certiorari or otherwise into any of her Majesty's courts of record at Westminster.

Order of justices not to be removed by certiorari.

And with respect to the recovery of rates, be it enacted as follows: Sect. 191. If any person rated under the authority of this or the special act fail to pay any of the said rates due from him for the space of fourteen days after demand thereof in writing by the commissioners or their collector, any justice, on the application of the commissioners or their collector, may summon such person to appear before him at a time to be mentioned in the summons to show cause why the rates due from him should not be paid; and in case no sufficient cause for

Recovery of rates

Rates to be recovered by distress.



10 & 11 Vict.  
c. 34.

the nonpayment of such rate be shown, the same shall be levied by distress, and such justice shall issue his warrant accordingly, or the commissioners may recover the same by action of debt; provided that if no sufficient distress whereon to levy the amount due in respect of such rates can be found within the jurisdiction of the said justice, then, upon oath thereof made before any justice of any other county or jurisdiction in which any goods or chattels of the person not paying the said rates may be found, such justice shall certify the said oath by endorsing the said warrant, and thereupon the amount due in respect of the said rates, and unpaid by the said person, may be levied by distress of the goods and chattels of such person as assessed in the last-mentioned county or jurisdiction.

Form of warrant  
of distress.

Constables to  
assist in making  
distress.

Rate books to be  
evidence.

Sect. 192. The warrant of distress for the recovery of any rate made payable by this or the special act may be in the form or to the effect mentioned in schedule (B.) to this act annexed; and in all cases where a distress is hereby authorised to be made, every constable authorised by the warrant to levy any sum mentioned therein shall, upon being required by a collector of the rates, aid in making a distress or sale pursuant to such warrant; and every constable who refuses to do so shall be liable to a penalty not exceeding 5*l*.

Sect. 193. In any proceeding to levy and recover or consequent on the levying or recovering of any rate under the provisions of this or the special act, the books of rates of the commissioners, and all entries made therein in manner by this or the special act directed, by the production thereof alone, and without any evidence that the notices and other requirements of this or the special act have been given or complied with, or proof of the seal of the commissioners if they are incorporated, or if not, then on proof of the signatures of the commissioners whose names appear thereon or subscribed therein, shall be received as evidence of such rate and of the contents thereof.

Remedy against  
persons quitting  
before payment of  
rates.

Sect. 194. If any person quit or be about to quit any rateable property before he has paid the rates then payable by him in respect thereof, and do not pay the same to the commissioners or their collector on demand, any justice having jurisdiction where such person resides, or his goods are found, may summon such person to appear before him at a time mentioned in the summons to show cause why the rates should not be paid, and if no sufficient cause for the nonpayment of such rates be shown accordingly the same shall be levied by distress, and such justice shall issue his warrant accordingly.

Rates to be ap-  
portioned on  
holder quitting.

Sect. 195. When any rate has been made for a particular period, and the owner or occupier who is rated to such rate ceases to be the owner or occupier of the property in respect whereof he is rated before the end of such period, such owner or occupier shall be liable to pay a portion only of the rate payable for the whole of such period proportionate to the time during which he continued to be owner or occupier; and in every such case if any person after the making of such rate become the owner or occupier of any property so rated as aforesaid during part of the period for which such rate was made, such person shall pay a portion of such rate proportioned to the time during which he held or occupied the property so rated, and the same shall be recovered from him in the same manner as if he had been originally rated for such property.

Rates due from  
owner may be  
recovered from  
occupier.

Sect. 196. When the owner of any rateable property is rated in respect thereof under the authority of this or the special act, and the rate remains unpaid for three months, the commissioners or their collector may demand the amount of such rate from the occupier for the time being of such rateable property, and on nonpayment thereof may recover the same by distress and sale of his goods and chattels in

like manner as rates may be recovered from the occupier of any property liable to be rated; and every such occupier shall be entitled to deduct from the rent payable by him to such owner so much as was so paid by or recovered from him.

10 & 11 Viet.  
c. 34.

Sect. 197. Provided always, that no such occupier shall be required to pay, nor shall his goods and chattels be distrained for, any further sum than the amount of rent due from him at the time of the demand made upon him for such amount of rate, or which after such demand, and after notice not to pay the same to his landlord, at any time accrues and becomes payable by him, unless he refuse, on application being made to him for that purpose by or on behalf of the commissioners, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable; but the burthen of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier.

Occupier not to be required to pay more than the amount of rent owing by him.

Sect. 198. If, on the request of the commissioners, or of the collector of the said rates, the occupier of any property refuses or wilfully omits to disclose, or wilfully mis-states to the commissioners or collector making such request, the name of the owner of such property, or of the person receiving or authorised to receive the rents of the same, any justice of the peace, on oath made before him of such request, and of such refusal or wilful omission or mis-statement, may summon the person who has so refused or wilfully omitted or mis-stated as aforesaid to appear at a time and place to be mentioned in such summons before such justice, or before some other justice; and if the person so summoned neglect or refuse to attend at the time and place mentioned in the summons, or if he attend and do not show good cause to the justice then present for such his refusal or wilful omission or mis-statement, such justice, upon proof, in case of the neglect or refusal to attend as aforesaid, of the due service of the said summons, or on such attendance, may impose a penalty upon such person who has so refused, or wilfully made such omission or mis-statement, not exceeding the sum of 5*l*.

Occupier refusing to give name of owner liable to a penalty.

Sect. 199. The several persons who at the time of the passing of the special act are surveyors of highways for any township, or other district within the limits of the special act, may proceed for the recovery of any highway rate made in such township or district, and then remaining unpaid, in the same manner as they might have done if this and the special act had not been passed, and they shall apply the money which they so recover, in the first place, in reimbursing themselves any expenses which they have incurred as such surveyors as aforesaid, and in discharge of any debts legally owing from them in respect of the highways within such township or district; and the surplus, if any, arising from any buildings or lands within the limits of the special act, or a proportionate part thereof, shall be paid by them to the treasurer to the commissioners, and shall be applied to the same purposes as the rates by this or the special act authorised to be levied are directed to be applied.

Surveyors of highways may proceed for the recovery of arrears of highway rates.

And with respect to the bye-laws to be made by virtue of this or the special act, be it enacted as follows:

Bye-laws.

Sect. 200. The commissioners may from time to time make such bye-laws as they think fit for the several purposes for which they are hereinbefore or by the special act empowered to make bye-laws, and from time to time repeal, alter, or amend any such bye-laws, provided such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or the provisions of this or the special act, and be reduced into writing, and have affixed thereto the common seal of the commissioners if they be a body corporate, or the signatures of two of the commissioners if they be not a body corporate, and, if affecting other persons than the officers

Bye-laws.

10 & 11 Vict.  
c. 34.

Bye-laws may be  
enforced by im-  
position of penal-  
ties.

Bye-laws to be  
confirmed.

Notice of confir-  
mation to be  
given.

A copy of pro-  
posed bye-laws to  
be open to in-  
spection.

Publication of  
bye-laws.

Penalty.

Bye-laws to be  
binding on all  
parties.  
Evidence of bye-  
laws.

or servants of the company, be confirmed and published as herein provided.

Sect. 201. The commissioners, by the bye-laws so to be made by them, may impose such reasonable penalties as they think fit, not exceeding 40s. for each breach of such bye-laws: Provided always, that such bye-laws be so framed as to allow the justices before whom any penalty imposed thereby is sought to be recovered to order the whole or part only of such penalty to be paid, or to remit the whole penalty.

Sect. 202. No bye-law made by the commissioners under the authority of this or the special act, except such as relate solely to the commissioners or their officers or servants, shall come into operation until the same be confirmed in the prescribed manner, and if no manner of confirmation be prescribed, then not until it be allowed by some judge of one of the superior courts, or by the justices in quarter sessions; and it shall be incumbent on such justices, on the request of the commissioners, to inquire into any bye-laws tendered to them for that purpose, and to allow or disallow of the same as they think meet.

Sect. 203. No such bye-law shall be confirmed unless notice of the intention to apply for a confirmation of the same have been given in one or more newspapers circulating within the limits of the special act one month at least before the hearing of such application; and any person desiring to object to any such bye-law, on giving to the commissioners notice of the nature of his objection ten days before the hearing of the application for the allowance thereof, may, by himself or his counsel, attorney, or agent, be heard thereon, but not so as to allow more than one objecting party to be heard on the same matter of objection.

Sect. 204. For one month at least previous to any such application for confirmation of any bye-law a copy of the proposed bye-laws shall be kept at the principal office of the commissioners, and all persons may at all reasonable times inspect such copy without fee or reward; and the commissioners shall furnish every person who applies for the same with a copy thereof, or of any part thereof, on payment of 6d. for every one hundred words so to be copied.

Sect. 205. Such bye-laws, when confirmed, shall be published in the prescribed manner, and when no manner of publication is prescribed they shall be printed, and the clerk to the commissioners shall deliver a printed copy thereof to every person applying for the same without charge; and a copy thereof shall be painted or placed on boards, which shall be hung up on the front or in some conspicuous part of the principal office of the commissioners, and also on some conspicuous part of the works or locality to which the same relate; and such boards, with the bye-laws thereon, shall be from time to time renewed as occasion requires, and shall be open to inspection without fee or reward; and any such clerk who does not allow the same to be inspected at all reasonable times shall for every such offence be liable to a penalty not exceeding 5s.

Sect. 206. Such bye-laws, when so confirmed and published, shall be binding upon and be observed by all parties, and shall be sufficient to justify all parties acting under the same.

Sect. 207. The production of a written or printed copy of the bye-laws requiring confirmation by a judge of the superior courts or the court of quarter sessions, authenticated by the signature of the judge or of the chairman of the court which approved of the same, and a written or printed copy of the bye-laws not requiring such confirmation authenticated by the common seal of the commissioners, if they be incorporated, or, if not incorporated, authenticated by the signatures of two commissioners, shall be evidence of the existence and of the due making of such bye-laws in all prosecutions under the same, without adducing proof of the signature of such judge or chairman, or the common seal or signatures of the commissioners; and with respect to

the proof of the publication thereof it shall be sufficient to prove that a board containing a copy thereof was affixed and continued in the manner by this act directed, and in case of its being afterwards displaced or damaged, that such board was replaced or restored as soon as conveniently might be, unless proof be adduced by the party complained against that such painted board did not contain a copy of the bye-law under which he is prosecuted, or that it was not duly affixed or continued as required by this act.

10 & 11 Vict.  
c. 34.

Sect. 208. Any person who destroys, pulls down, injures, or defaces any board on the premises of the commissioners on which any bye-law of the commissioners is painted or placed shall for every such offence be liable to a penalty not exceeding 5*l*.

Penalty on pulling down boards.

By sect. 209, if any party have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, &c., he may tender amends in case of action brought.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows :

Recovery of damages and penalties.

Sect. 210. The clauses of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and penalties, and to the determination of any other matter referred to justices, shall be incorporated in this and the special act ; and such clauses shall apply to the town or district within the limits of the special act, and to the commissioners, and shall be construed as if the word " commissioners " had been inserted therein instead of the word " company." See title, "*Railways*."

Clauses of 8 & 9 Vict. c. 20, as to recovery of damages and penalties incorporated with this and special act, &c.

Sect. 211. Provided always, that in Ireland, in the case of any penalty imposed by justices, where the application is not otherwise provided for, such justices may award not more than one half of such penalty to the informer, and shall award the remainder to the guardians of the poor of the union within which the offence was committed, to be applied in aid of the poor rates of such union.

In Ireland part of penalties to be paid to guardians of unions.

Sect. 212. All things herein or in the special act, or any act incorporated herewith, authorised or required to be done by two justices, may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices.

Things required to be done by two justices may, in certain cases, be done by one.

Sect. 213. Every person who, upon any examination upon oath under the provisions of this or the special act, or any act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Persons giving false evidence liable to penalties of perjury.

And with respect to affording access to the special act, be it enacted as follows :

Access to special act.

Sect. 214. The commissioners shall at all times, after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace of the county in which the town or district within the limits of the special act is situated a copy of such special act, so printed as aforesaid ; and the said clerk of the peace shall receive, and he and the commissioners respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present Majesty, intituled " An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.

Copies of special act to be kept by commissioners at their office, and deposited with the clerks of the peace, &c., and be open to inspection.

7 W. 4 & 1 Vict.  
c. 83.

Sect. 215. If the commissioners shall fail to keep or deposit, as here-

Penalty on com-

Towns Improvement.

10 & 11 Vict.  
c. 34.  
missioners failing  
to keep or deposit  
such copies.

inbefore mentioned, any of the said copies of the special act, they shall forfeit 20*l.* for every such offence, and also 5*l.* for every day afterwards during which such copy is not so kept or deposited.

SCHEDULES referred to by the foregoing Act.

SCHEDULE (A.)—Sect. 172.

Form of Rate.

An assessment to the sewer rate [or other rate, &c., as the case may be,] for the [name the district or town], made this day of in the year of our Lord, 18 , after the rate of pence in the pound, by virtue of the [name special act].

No. on the Rate.	Name of Person rated.	Name of the Owner of Pro- perty rated.	Description and Situation of Property.	Gross Annual Value.	Full net Annual Value.	Rate at <i>d</i> in the Pound.	Amount of Drainage Rate (if any).

Signed by us, this day of in the year of our Lord .  
A. B. }  
C. D. }  
E. F. } Commissioners. Improvement  
G. H. }  
I. K. }  
L. M. }

SCHEDULE (B.)—Sect. 192.

Form of Warrant of Distress for the Recovery of a Rate.

County of }  
[or Borough, &c.] }  
to wit.

Whereas complaint hath been duly made by one of the collectors of rates to the improvement commissioners, that of, &c., hath not paid and has refused to pay the sum of duly assessed upon him in and by a certain rate for the said town [or district] called the [here name the rate], bearing date on or about the day of in the year of our Lord one thousand eight hundred and , and duly made according to the directions and for the purposes of [here name the special act] although the same hath been duly demanded of him: and whereas it appears to me one of her Majesty's justices of the peace in and for the said county [or Borough, &c.], as well upon the oath of one of the said collectors of rates, as otherwise, that the said sum of hath been duly demanded in writing by him from the said and that the said hath refused to pay the same, for the space of fourteen days after such demand made, and doth refuse to pay the same: And whereas the said having appeared before me, in pursuance of my summons for that purpose, hath not shown to me any sufficient cause why the same should not be paid [or And whereas it hath been duly proved to me upon oath that the said hath been duly summoned to appear before me to show cause why he refuseth to pay the said rate or assessment, but he the said hath neglected to appear according to the said summons, and hath not shown to me any sufficient cause why the same should not be paid]: These

are therefore, in her Majesty's name, to command you to levy the said sum of 10 & 11 Vict.  
by distress of the goods and chattels of the said ; and if c. 34.  
the same shall not be paid within the space of days next after such  
distress by you taken, together with the reasonable charges of taking and keeping  
the same, that then you do sell the said goods and chattels by you distrained,  
and out of the money arising by such sale that you do detain the sum of  
and also your reasonable charges of taking, keeping, and selling the said dis-  
tress, rendering to him the said the overplus, on demand ; and if  
sufficient distress cannot be found of the goods and chattels of the said  
whereon to levy the said sum of that then you certify the same to me,  
together with this warrant, to the end that such further proceedings may be had  
therein as to the law doth appertain. Given under my hand and seal, the  
day of in the year of our Lord 18 .

J. P. (L. S.)

### Gardens in Towns.

By the 26 Vict. c. 13 (a) "An Act for the Protection of certain Garden 26 Vict. c. 13.  
or Ornamental Grounds in Cities and Boroughs," it is enacted that—

Sect. 1. Where in any city or borough any enclosed garden or orna-  
mental ground has been set apart otherwise than by the revocable  
permission of the owner thereof in any public square, crescent, circus,  
street, or other public place, for the use or enjoyment of the inhabi-  
tants thereof, and where the trustees, commissioners, or other body  
appointed for the care of the same have neglected to keep it in proper  
order, or where such garden or ground has not been vested in or placed  
under the management of any trustees, commissioners, or other body  
for the care of the same, and from the want of such care, or from any  
other cause, has been neglected, the metropolitan board of works,  
where the same is in any place under their jurisdiction, except the  
city of London (where the provisions of this act shall be carried into  
effect by the corporation of the said city), and the corporate authorities  
in any other city or borough, shall take charge of the same, putting  
up a notice or notices to that effect in such garden or ornamental  
ground, and if after due inquiry the person entitled to any estate of  
freehold in the same cannot be found, or if it shall be vested in any  
person by whom it is held, subject to any condition or reservation for  
keeping the same as and for a garden or pleasure ground, or that the  
same shall not be built upon, but not otherwise, shall cause any build-  
ings or other encroachment made therein within the period of twenty  
years before the passing of this act to be removed, and (if requested by  
a majority of two thirds of the owners and of the occupiers of the  
houses surrounding the same) shall vest such garden or ornamental  
ground in a committee consisting of not more than nine nor fewer than  
three of the rated inhabitants of such houses to be chosen annually by  
such inhabitants, in order that the same may be kept as a garden or  
ornamental ground for the use of such inhabitants ; and the vestry or  
board of any and every parish or district within which the same or any  
part thereof is situate shall from time to time cause to be raised the sums  
required by such committee for defraying the expenses of the main-  
tenance and management of such enclosed garden or ornamental  
ground, or of such part thereof as is situate within their parish or  
district, by an addition to the general rate to be assessed on the occu-  
piers of such houses ; or if the said owners and occupiers shall not  
agree as aforesaid to undertake the charge of such garden or orna-  
mental ground, the metropolitan board of works or corporate autho-  
rity aforesaid shall, within six months after the notice hereinbefore  
mentioned shall have been put up within the same, or within such  
further time as the said board or authority may think it expedient to

Gardens in certain squares, &c., may be freed from neglect, encroachments, &c., and vested in the metropolitan board of works, or other corporate authority ;

or vested in a committee of rated inhabitants

(a) See also "Public Health."

*Gardens in  
Towns.*

26 Vict. c. 13.

Protection of open  
spaces from en-  
croachment.

allow for such agreement to be come to, vest the same in such vestries or boards, who shall thenceforth take charge of and maintain the same as an open place or street in such manner as shall appear to them most advantageous to the public, subject to the approval of the metropolitan board of works or corporate authority, as the case may require; saving and always reserving to every person and persons, his and their heirs, executors, administrators, and assigns, all such estate, right, title, and interest, as he, she, or they would or ought to have had and enjoyed of, in, to, from, or out of the gardens and grounds aforesaid in case this act had not passed.

Sect. 2. And whereas it is expedient that the same should be carefully protected from undue encroachment, where any right to require that any garden or ornamental ground as aforesaid be kept and maintained as such, or that the same shall not be built upon, shall belong to any person in right of any house or other property, and he shall by notice in writing signed by him addressed to the metropolitan board of works where the same is in any place under their jurisdiction, except the city of London, where the same shall be addressed to the corporation of the said city, or to the corporate authorities in any other city or borough, requesting the said metropolitan board of works or corporate authority to protect the right before mentioned, the said metropolitan board of works or corporate authority, after due inquiry, may, if they shall think fit, accede to such request, and then and thereupon the right of such person to require that such garden or ornamental ground to be maintained as such, or that the same shall not be built upon, shall thenceforth be vested in such metropolitan board of works or corporate authority, who shall be fully empowered, for and in their own name, to exercise all the rights, powers, and privileges in relation thereto, and take such legal proceedings for asserting, defending, and protecting the same, as the said person might have exercised or taken.

Expenses how to  
be defrayed.

Sect. 3. Any charge incurred by the metropolitan board of works in the execution of this act shall be deemed to be expenses of the said board for payment whereof provision is made by the act for the better local management of the metropolis; and the expenses incurred by any corporate authority shall be deemed to be expenses necessarily incurred by them in carrying into execution within and for their city or borough the act intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any other act amending the same.

5 &amp; 6 W. 4, c. 76.

Bye-laws for  
management of  
garden, &c.

Sect. 4. Where any such garden or ground is managed by any committee of the inhabitants of any square, crescent, circus, street or place, such committee may make, and from time to time revoke and alter, bye-laws for the management of the same, and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses, and other things therein, which bye-laws shall be entered in a book kept for that purpose by the committee, signed by the chairman of the meeting at which the same shall be passed, and which book shall and may be produced and read, and taken as evidence of such bye-laws, in all courts whatever, and any inhabitant or servant, or other person admitted to such garden by any inhabitant, offending against the same, after they shall have been duly allowed, as herein-after provided, upon proof thereof before a magistrate acting for the district in which such garden is situate, shall be liable for each offence to a penalty not exceeding 5*l.*: Provided always, that such bye-laws shall not come into operation until the same shall have been allowed by some judge of one of the superior courts, or by the justices in quarter sessions; and it shall be incumbent on such judge or justices, on the request of such committee, to inquire into any bye-laws tendered to them for that purpose, and to allow or disallow the same as they think meet.

Sect. 5. Any police constable who shall see any person throwing any rubbish into any such garden, or trespassing therein, or getting over the railings or fence, or stealing or damaging the flowers or plants, or committing any nuisance therein, may apprehend such person, under the authority hereby given to him; and any person convicted before any magistrate acting for the district shall be liable for each and every offence aforesaid to a penalty not exceeding 40s., or to imprisonment for any period not exceeding 14 days; and in case it shall be necessary to state in any proceedings the ownership of the property of such garden, flowers, or plants, it shall be sufficient to describe the same as the property of the committee by the name of A.B. and others.

*Gardens  
in Towns.*

26 Vict. c. 13.

Penalty for injuring garden.

Sect. 6. The provisions contained in ss. 225, 226, 227, 228 of 18 & 19 Vict. c. 120, shall be incorporated in this act, and shall apply to any penalty or forfeiture imposed by this act, or any bye-law made in pursuance thereof, in and for every matter or thing done or omitted to be done within the metropolitan district; and the act 11 & 12 Vict. c. 43, shall apply to every penalty or forfeiture imposed by this act, or any bye-law made in pursuance thereof, for any matter or thing done or omitted to be done within any other part of England and Wales.

Certain provisions of 18 & 19 Vict. c. 120 to be incorporated with this act, and to apply to penalties, &c., imposed by this act.

11 & 12 Vict. c. 43, also to apply.

By sect. 7, this act is not to extend to property of the crown or to property under the management of the commissioners of works, &c.

## Traverse.

[60 Geo. 3 & 1 Geo. 4, c. 4; 14 & 15 Vict. c. 100.]

TRAVERSE took its name from the French *de traverse*, which is no other than *de transverso* in Latin, signifying *on the other side*; because, as the indictment on the one side chargeth the party, so he, on the other side, cometh in to discharge himself. (*Lamb. 540.*)

Meaning of.

The word *traverse* is only applied to an issue taken upon an indictment for a *misdemeanor*; and it should rather seem applicable to the fact of putting off the trial till a following sessions or assizes, than to the joining of issue; and therefore, perhaps, the derivation is from the meaning of the words *transverto*, which, in barbarous Latin, is to go over, *i. e.* to go from one sessions, &c. to another, and thus it is that the officer of the court asks the party whether he be ready to try then, or will traverse over to the next sessions, &c., but the issue is joined immediately by pleading not guilty.

Applies to misdemeanors only.

To traverse an indictment, then, is to take issue upon the chief matter thereof, which is the same as if one shall say, *to make contradiction*, or *to deny the point of the indictment*. As in a presentment against a person for a highway overflowed with water, for default of scouring a ditch, which he and they, whose estate he hath in certain lands there, have used to scour and cleanse, such person may traverse either the matter,—to wit, that there is no highway there, or that the ditch is sufficiently scoured: or otherwise he may traverse the cause,—to wit, that he hath not that land, or that he and they whose estate he hath have not used to scour the ditch.

Puts all matters in issue.

Previous to 60 Geo. 3 & 1 Geo. 4, c. 4, entitled “An Act to prevent Delay in the Administration of Justice in Cases of Misdemeanor,” indictments for misdemeanors, where the defendant was not actually in custody, were not formerly tried at the assizes or sessions, in which the defendant pleaded to or traversed the indictment; but the practice was to require the defendant to enter into recognizances to appear at the next assizes or sessions, then to try the traverse, giving notice to

Right to traverse now narrowed.



the prosecutor according to the practice of the particular court in which the indictment might happen to be. (4 *Bl. Comm.* 351.) But this right of traversing is narrowed by that statute.

60 Geo. 3 & 1 Geo.  
4, c. 4.

Persons prosecuted in K. B. for misdemeanors, appearing in court, not permitted to implead.

Judgment may be entered for want of plea.

Court may allow further time to plead.

14 & 15 Vict. c. 100.  
Provision as to traversing indictments.

60 Geo. 3 & 1 Geo.  
4, c. 4.  
In prosecutions by attorney-general, &c., copy of information, &c., delivered gratis.

If prosecution not brought to trial

Sect. 1 of that act relates to impleading and pleading to indictments in the court of Queen's Bench, and in order to remedy the great delays that had occurred in the administration of justice, in cases of persons prosecuted for misdemeanors by indictment or information in his Majesty's courts of King's Bench at Westminster and Dublin, &c., enacts, That where any person shall be prosecuted in his Majesty's court of King's Bench at Westminster, or in his Majesty's court of King's Bench in Dublin, respectively, for any misdemeanor, either by information or by indictment there found or removed into the same respective courts, and shall appear in term time in either of the said courts respectively in person, to answer to such indictment or information, such defendant, upon being charged therewith, shall not be permitted to implead to a following term, but shall be required to plead or demur thereto within four days from the time of his or her appearance; and in default of his or her pleading or demurring within four days as aforesaid, judgment may be entered against the defendant for want of a plea; and in case such defendant shall appear to such indictment or information by his or her clerk or attorney in court, it shall not be lawful for such defendant to implead to a following term, but a rule, requiring such defendant to plead, may forthwith be given, and a plea or demurrer to such indictment or information enforced, or judgment by default entered thereupon, in the same manner as might have been done, before the passing of this act, in cases where the defendant had appeared to such indictment or information, by his or her clerk in court, or attorney, in a previous term.

Sect. 2. Provided that it shall be lawful for the said respective courts, or for any judge of the same respectively, upon sufficient cause shown for that purpose, to allow further time for such defendant to plead or demur to such indictment or information.

Sects. 3 to 17 relate to the pleading to indictments at the assizes or sessions. These sections contained provisions for limiting and regulating the right of persons indicted for misdemeanors to traverse to subsequent assizes or sessions. This subject is now regulated by sect. 27 of 14 & 15 Vict. c. 100, as follows,—

No person prosecuted shall be intitled to traverse or postpone the trial of any indictment found against him at any session of the peace, session of oyer and terminer, or session of gaol delivery: Provided always, that if the court, upon the application of the person so indicted or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such court may adjourn the trial of such person to the next subsequent session, upon such terms as to bail or otherwise as to such court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session without entering into any fresh recognizance for that purpose.

Sect. 8. In all cases of prosecutions for misdemeanors, instituted by his Majesty's attorney or solicitor general, in any of the courts aforesaid, the court shall, if required, make order that a copy of the information or indictment shall be delivered, after appearance, to the party prosecuted, or his clerk in court, or attorney, upon application made for the same, free from all expense to the party so applying; provided that such party, or his clerk in court, or attorney, shall not have previously received a copy thereof.

Sect. 9. Provided that in case any prosecution for a misdemeanor, instituted by his Majesty's attorney or solicitor general in any of the

courts aforesaid, shall not be brought to trial within twelve calendar months next after the plea of not guilty shall have been pleaded therein, it shall be lawful for the court in which such prosecution shall be depending, upon application to be made on the behalf of any defendant in such prosecution, of which application twenty days' previous notice shall have been given to his Majesty's attorney or solicitor general, to make an order, if the said court shall see just cause so to do, authorising such defendant to bring on the trial in such prosecution; and it shall thereupon be lawful for such defendant to bring on such trial accordingly, unless a *nolle prosequi* shall have been entered in such prosecution.

60 Geo. 3 &  
1 Geo. 4, c. 4.  
within twelve  
calendar months,  
court may make  
order thereon,  
upon notice.

Sect. 10. Nothing in this act contained shall extend, or be construed to extend, to any prosecution by information, in nature of a *quo warranto*, or for the non-repair of any bridge or highway.

Proviso for indict-  
ments for non-  
repair of high-  
ways, &c.

The defendant should appear in person at the bar of the court at the time appointed for the trial of the traverse, and whilst the defendant is at the bar, the clerk of the peace reads the indictment to the jury, and then says, "to which indictment the defendant hath pleaded not guilty. Your business, gentlemen, is to inquire whether he be guilty or not guilty, and hearken to your evidence." Then the crier makes the usual proclamation; and, if the prosecutor appears, the trial proceeds. (*Dick. Sess.* 336.)

Appearance and  
trial.

## Treason.

[3 Edw. 1, c. 15; 25 Edw. 3, st. 5, c. 2; 1 Mary, sess. 1, c. 1; 31 Car. 2, c. 2; 7 Will. 3, c. 3; 7 Anne, c. 21; 20 Geo. 2, c. 30; 30 Geo. 3, c. 48; 36 Geo. 3, c. 7; 39 & 40 Geo. 3, c. 93; 54 Geo. 3, c. 146; 57 Geo. 3, c. 6, c. 7; 9 Geo. 4, c. 31; 5 & 6 Vict. c. 51; 11 & 12 Vict. c. 12.]

Herein of—

- I. *High Treason*, p. 1021.
- II. *Petit Treason*, p. 1028.
- III. *Misprision of Treason*, p. 1029.
- IV. *Discharging, &c., Fire Arms, &c., at the Queen*, p. 1029.
- V. *Forms*, p. 1030.

### I. High Treason.

**TREASON**, according to Lord Coke, is derived from *trahir*, to betray; and *trahison*, by contraction *treason*, is the betraying itself. (*3 Inst.* 4.)

Meaning of the  
word treason.

Treason, generally speaking, is intended, not of petit treason, but of high treason only. (*1 Hale*, 316.)

In high treason, as hath been said before, there are no accessaries, but all are principals; and, therefore, whatsoever act or consent will make a man accessory to a felony before the act done, the same will make him a principal in case of high treason. (*3 Inst.* 9, 21.)

No accessaries in.

Notwithstanding that treason and misprision of treason are not within the letter of the commission of the peace, yet, inasmuch as they are against the peace of the queen and of the realm, any justice of the peace may, either upon his own knowledge, or the complaint of others, cause any person to be apprehended for any such offence. And such justice may take the examination of the person so apprehended, and the information of all those who can give any material evidence against

Power of justices  
therein.

1. *High Treason.* him, and put the same in writing, and also bind over such who are able to give any such evidence, to the Queen's Bench or gaol delivery, and certify his proceedings to such court. (2 *Haw. c. 8, s. 34*; *Hale's Sum.* 168; 1 *Hale*, 372.)

Bail. And having committed the offender (for he is by no means bailable by justices of the peace, 3 *Edw. I. c. 15*; 2 *Haw. c. 15, s. 44*), it may be advisable for him to send an account immediately of all the particulars to a secretary of state.

Treason by the 25 *Edw. 3.*

By 25 *Edw. 3, st. 5, c. 2*, which Lord *Hale* calls a *sacred* act, and Lord *Coke* an *excellent* act, and the king who made it a *blessed* king, and the parliament a *blessed* parliament, all treasons which had been uncertain before were settled. Which act, by 1 *Mary*, sess. 1, c. 1, is reinforced, and again made the only standard of treason; and all statutes, between the said statutes of 25 *Edw. 3* and 1 *Mary*, which made any offences high or petit treason, or misprision of treason, are abrogated; so that no offence is at this day to be esteemed high treason, unless it be either declared to be such by the said statute of 25 *Edw. 3*, or made such by some statute since the 1 *Mary*.

And therefore I shall first consider such offences as are high treason within the said statute of 25 *Edw. 3*, and then such as are made treason by statutes subsequent to the said statute of the 1 *Mary*.

The words of the statute of 25 *Edw. 3*, as to this matter, are as follow:—

“Whereas divers opinions have been before this time in what case treason shall be said, and in what not [that is, what shall or shall not be said to be treason]; the king, at the request of the lords and commons, hath made a declaration in the manner as hereafter followeth: that is to say, when a man doth compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir,” [which words extend to the case of a queen regnant, *R. v. Oxford*, 9 *C. & P.* 525. As to what are overt acts of compassing the queen's death, see *Arch. Crim. Law*, by *Jervis*.]

“Or if a man do violate the king's companion [that is, his wife, 3 *Inst.* 9], or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir;”

“Or if a man do levy war against our lord the king in his realm.” (See *R. v. Frost*, 9 *C. & P.* 129, and the decision and law in *Jervis Arch. C. L.*)

“Or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere.” (See *Jervis, Arch. C. L.*)

“And thereof be probably [proveablement, proveably] attainted of open deed, by the people of their condition.”

“And if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into the realm, counterfeit to the money of England, knowing the money to be false.” [But this treason as to the seals is now punishable under 24 & 25 *Vict. c. 98, s. 1*. See “*Forgery*,” and as to the coin is punishable under 24 & 25 *Vict. c. 99*. See “*Coin*.”]

“And if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places, doing their offices.”

“And it is to be understood, that in the cases above rehearsed, that ought to be judged treason which extends to our lord the king, and his royal majesty.”

By 1 *Mary*, sess. 1, c. 1.

And by 1 *Mary*, sess. 1, c. 1, which Lord *Hale* (1 *Hale*, 308) calls another excellent law, “No act, deed, or offence, being by act of parliament made treason, by words, writing, ciphering, deeds, or otherwise whatsoever, shall be adjudged to be treason, but only such as be declared by the

said statute of the 25 Edw. 3." And this (he says) at one blow laid flat all the numerous treasons at any time enacted since 25 Edw. 3.

Lord Coke (3 Inst. 14, 140) seems to be of opinion, upon the said act of 25 Edw. 3, that bare words are not a sufficient overt act, or open deed, whereby to convict a person of treason; but that they are misprision of treason only. So, also, Lord Hale (1 Hale, 111, 118, and elsewhere throughout) seemeth to think that words, unless put into writing, are not regularly an overt act. But Mr. Hawkins (1 Haw. c. 17, s. 39) argues the contrary, and amongst other reasons for his opinion, he observes, that to charge a man with speaking treason, is unquestionably actionable, which could not be, if no words could amount to treason; also, that as, in case of felony, he who by command or persuasion induceth another to commit felony, is an accessory in felony, so he who does the same in treason is a principal traitor (there being no accessories in treason, but all being principals); and yet such person doth not act but by words. Nevertheless, at this day, it seems clearly to be agreed, that by the common law and the statute of Edw. 3, words spoken amount only to a high misdemeanor, and no treason. (4 Bla. Com. 80.)

1. High Treason.

Mere words not treason.

But writings which import a compassing of the queen's death are sufficient overt acts of this species of treason, if published; (1 Hale, 118; 3 Inst. 14; Fost. 198; 1 Hawk. c. 17, s. 31;) as, for instance, writings inciting persons to kill the queen (R. v. Twyn, Kel. 22), or the like. So, words of advice or persuasion are sufficient overt acts of this species of treason, if they advise or persuade to an act which would of itself (if committed) be a sufficient overt act. (Fost. 195, 200; R. v. Charnock, 4 St. Tr. 562; 2 Salk. 631.) So, words may be laid in the indictment to explain an act; as for instance, an act seemingly innocent in itself may be shown to be an overt act of treason, by its connection with words spoken by the party at the time. (1 Hale, 115; and see R. v. Parkyns, 4 St. Tr. 627, 657; R. v. Crohagan, Cro. Car. 332; R. v. Lee, 7 St. Tr. 43; Arch. Crim. Law, by Jervis.)

Writings may be.

So words of persuasion.

The prisoner is not bound to show what was the object or meaning of the acts done by him; it is for the Crown to make out that they are to the treason charged in the indictment. (Reg. v. Frost, 9 C. & P. 129.)

Prisoner not bound to explain his acts.

By 36 Geo. 3, c. 7, s. 1, "if any person or persons whatsoever, after the day of the passing of this act, during the natural life of our most gracious sovereign lord the king (whom Almighty God preserve and bless with a long and prosperous reign), and until the end of the next session of parliament after the demise of the crown, shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the same our sovereign lord the king, his heirs and successors;"

Treasons within the statute 36 Geo. 3, c. 7.

"Or to deprive or depose him or them from the style, honour, or kingly name of the imperial crown of this realm, or of any other of his majesty's dominions or countries;"

"Or to levy war against his Majesty, his heirs and successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels;"

"Or in order to put any force or constraint upon, or to intimidate or overawe both houses, or either house of parliament;"

"Or to move or stir any foreigner or stranger with force to invade this realm, or any other his Majesty's dominions or countries, under the obedience of his majesty, his heirs and successors;"

"And such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed, being legally convicted thereof, upon the oaths of two lawful and credible witnesses,

1. *High Treason.*

upon trial, or otherwise convicted or attainted by due course of law, then every such person and persons, so as aforesaid offending, shall be deemed, declared, and adjudged to be a traitor and traitors, and shall suffer pains of death, and also lose and forfeit as in cases of high treason."

By 57 Geo. 3, c. 7, s. 1, the provisions of 36 Geo. 3, which relate to the heirs and successors of his Majesty, the sovereigns of these realms, are made perpetual.

11 & 12 Vict. c. 12.

By 11 & 12 Vict. c. 12, "An Act for the better security of the Crown and Government of the United Kingdom," reciting the above provisions of 36 Geo. 3, c. 7, and that by the 57 Geo. 3, c. 6, the said provisions which relate to the heirs and successors of his said Majesty, the sovereigns of these realms, were made perpetual: and that doubts were entertained whether the provisions so made perpetual were by the last-recited act extended to Ireland: and that it was expedient to repeal all such of the provisions made perpetual by the last-recited act as do not relate to offences against the person of the sovereign, and to enact other provisions instead thereof applicable to all parts of the United Kingdom, and to extend to Ireland such of the provisions of the said acts as are not hereby repealed: it is enacted (s. 1), "that from and after the passing of this act the provisions of 36 Geo. 3, c. 7, made perpetual by the said act of the 57th of the same reign, and all the provisions of the last-mentioned act in relation thereto, save such of the same respectively as relate to the compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the heirs and successors of his said majesty George 3, and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices or intentions, or any of them, shall be and the same are hereby repealed.

After passing of this act, provisions of 36 Geo. 3, c. 7, and 57 Geo. 3, c. 6, repealed, except as to offences against the person of the sovereign.

So much of 36 Geo. 3, c. 7, made perpetual by 57 Geo. 3, c. 6, as is not repealed, extended to Ireland.

2. "That such of the said recited provisions made perpetual by the 57th Geo. 3, as are not hereby repealed shall extend to and be in force in that part of the United Kingdom called Ireland."

This extends to Ireland only so much of the 36 Geo. 3, c. 7, (which having passed before the Union did not bind Ireland), as was made perpetual by the 57 Geo. 3, c. 6, s. 1, and is not repealed by the first section, but it does not extend to Ireland the provisions of 57 Geo. 3, c. 6, s. 4, and the prisoner is not entitled to a copy of the indictment and a list of the witnesses to be delivered to him before the trial. (*O'Brien v. The Queen*, 2 *House of Lords Cas.* 465.)

Offences declared felonies by this act to be punishable by transportation or imprisonment.

3. "That if any person whatsoever after the passing of this act shall, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our most gracious lady the queen, her heirs or successors, from the style, honour or royal name of the imperial crown of the United Kingdom, or of any other of her Majesty's dominions and countries, or to levy war against her Majesty, her heirs or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both houses or either House of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other of her Majesty's dominions or countries under the obedience of her Majesty, her heirs or successors, and such compassings, imaginations, inventions, devices or intentions, or any of them, shall express, utter or declare, by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be im-

prisoned for any term not exceeding two years, with or without hard labour, as the court shall direct.

Sect. 4. Provides, that no person should be prosecuted for any felony by virtue of this act, in respect of such compassings, &c., expressed, uttered or declared *by open and advised speaking only*, unless a warrant for the apprehension of the person was issued within two years next after the passing of this act.

Sect. 5. That it shall be lawful, in any indictment for any felony under this act, to charge against the offender any number of the matters, acts or deeds by which such compassings, imaginations, inventions, devices or intentions as aforesaid, or any of them, shall have been expressed, uttered or declared.

Sect. 6. Provided always, that nothing herein contained shall lessen the force of or in any manner affect anything enacted by 25 Edw. 3, c. 2.

Sect. 7. Provided also, that if the facts or matters alleged in an indictment for any felony under this act shall amount in law to treason, such indictment shall not by reason thereof be deemed void, erroneous or defective; and if the facts or matters proved on the trial of any person indicted for any felony under this act shall amount in law to treason, such person shall not by reason thereof be entitled to be acquitted of such felony; but no person tried for such felony shall be afterwards prosecuted for treason upon the same facts.

Sect. 8. That in the case of every felony punishable under this act, every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any such felony shall on conviction be liable to be imprisoned, with or without hard labour, for any term not exceeding two years.

Sect. 9. Provides, that felonies under this act in Scotland are not bailable, except as provided by 5 & 6 Geo. 4, c. 73.

Sect. 10. That it shall not be lawful for any court before which any person shall be prosecuted or tried for any felony under this act to order payment to the prosecutor or the witnesses of any costs which shall be incurred in preferring or prosecuting any such indictment.

It is not necessary in order to sustain an indictment for compassing to levy war against the Queen, in order by force and constraint to compel her to change her measures and counsels, either to aver in the indictment or prove at the trial a compassing or intention to compel her Majesty to change *any particular* measures or counsels. (*R. v. Mitchell*, 3 Cox's C. C. 2.) To constitute a levying of war under this statute it is not necessary that there should have been any actual conflict. Any attempt by force or intimidation to interfere with the free action of the government is a "levying war" within the meaning of the above act. Any attempt to substitute another form of government for the existing one, or to dismember the United Kingdom, is sufficient to sustain a count under the above act charging the intent to be to depose the queen, &c.; and if several persons join in the same conspiracy, some intending by the means employed to force the government to change their measures, whilst the object of others is to sever Ireland from England, each is responsible for both intents. (*R. v. Dowling*, 3 Cox's C. C. 509, *Erle, J., and Williams, J.*)

Where the indictment charged in one set of counts, that the prisoner did feloniously compass, imagine, invent, devise and intend to deprive and depose our sovereign lady the Queen from the style, honour and royal name of the imperial crown of the United Kingdom; and the said feloniously compassing, imagination, invention, device and intention did express, utter and declare, by then and there feloniously publishing certain printings in a certain public newspaper called the Irish Felon; and in another set of counts the prisoner was charged in similar terms with compassing to levy war against her Majesty; it was held, upon a writ of error, that the indictment well charged an

1. *High Treason.*

Time within which prosecution shall be commenced, warrant issued, &c.

In indictments more than one overt act may be charged.

Nothing herein to affect provisions of 25 Edw. 3, c. 2.

Indictments for felony under this act valid, though the facts may amount to treason.

As to the punishment of accessories before and after the fact.

No costs allowed in prosecutions under this act.

Indictment.

As to printing.

# 1. *High Treason.*

offence under this statute, and that it was not necessary either to aver that the printings therein charged were felonious printings, or further to aver they were expressive and declaratory of the previously charged compassings and imaginations, or that they were published "of and concerning" her Majesty the Queen and the crown and government of the United Kingdom, or of and concerning some traitorous or felonious design then on foot or intended to be taken. (*Martin v. R.*, 3 *Cox's C. C.*, 309.)

## Distinct felonies.

The prisoner was indicted in one set of counts for feloniously compassing, &c., to deprive and depose our lady the Queen from the style, honour and royal name of the imperial crown of the United Kingdom, and on certain days in the indictment named, feloniously expressing said compassings, in feloniously publishing certain printings in a public newspaper, of which he was then and there the proprietor; and, in another set of counts, with feloniously compassing to levy war against the Queen, in order by force and constraint to compel her Majesty to change her measures and counsels, and with feloniously expressing such last-mentioned compassing by feloniously publishing the same printings, and on the same days and in the same public newspapers as in the first set of counts contained; and it was held, that there was no objection to joining the two felonies in one indictment. (*R. v. Mitchell*, 3 *Cox's C. C.* 1.)

## Joining counts.

Where an indictment contained counts for sedition, attending a seditious meeting, and a riot, the court refused to quash the indictment, or compel the counsel for the prosecution to elect, although the judgment on the last count might be different from that upon the others. (*R. v. Fussell*, 3 *Cox's C. C.* 291.)

## Copy of the indictment.

A prisoner charged under the 11 & 12 Vict. c. 12, is not entitled to a copy of the indictment, nor would the court exercise its discretion in his favour by awarding him a copy *ex gratia*. (*R. v. Lacey*, 3 *Cox's C. C.* 517. *Platt, B.*, and *Williams, J.*)

## Evidence.

A witness for the prosecution proved that he attended a meeting at which several conspirators were present, but none of the prisoners were there: he received at that meeting a leaf of a book from one of those present, named Bezer, which was to serve as a passport to a meeting to be held a week or two afterwards. He attended the second meeting, produced the leaf that had been given him, and was admitted. The prisoners were not present, nor were they shown to have joined the conspiracy at that time. Held, that the witness might state the substance of what Bezer told him when he gave him the leaf, and also what passed at the second meeting. It was proved that on the 16th of August, the time which had been fixed by the conspirators for a general outbreak, a large number of armed men were found assembled in a public-house in Webber Street. None of these men had been previously connected by the evidence with the conspiracy, neither did it appear that the house had been recognized as a place of meeting. It was held, that what was done, and what was found in that house, were admissible in evidence. (*R. v. Lacey*.)

## Inducing soldiers to desert.

As to the offence of inducing soldiers to desert, see "*Military Law*."

## Prosecution to be in three years.

By 7 Will. 3, c. 3, no person shall be prosecuted for high treason but within three years after the offence committed; except in the case of designing to assassinate the king's person.

## Trial to be the next term.

And by 31 Car. 2, c. 2, persons committed for high treason shall be indicted the next term, or next assize; otherwise they shall be let to bail, unless it appear to the court, upon oath, that the witnesses for the king could not be produced in that time; and, in such case, they shall be indicted the second term or assize, or else discharged.

## Not triable at the sessions.

By 5 & 6 Vict. c. 38, s. 1, no treason, misprision of treason, or offence against the queen's title, prerogative, person, or government,

or against either house of parliament, is triable at any quarter sessions. 1. *High Treason.*

By 7 Will. 3, c. 3, s. 1, persons indicted for high treason, whereby corruption of blood shall be made, or for misprision of such treason (except for counterfeiting the coin, the great seal, privy seal, privy signet, or sign manual), shall have a copy of the indictment (but not the names of the witnesses), delivered to them five days before the trial. Copy of indictment.

Sect. 7. And they shall have copies of the panel of the jurors delivered to them two days before trial. List of jurors and witnesses.

And moreover, 7 Anne, c. 21, s. 11, enacts, that after the death of the person pretending to be king of England by the name of James the Third, when a person is indicted for high treason or misprision of treason, both a copy of the indictment and lists of the jurors, and also of the witnesses, shall be delivered to the party indicted, *ten* days before the trial.

But this right to have a copy of the indictment, with a list of the witnesses and jurors, is, by 39 & 40 Geo. 3, c. 93, and 5 & 6 Vict. c. 51, s. 1, taken away in cases of high treason in compassing or imagining the death or destruction, or any bodily harm tending to the death or destruction, maiming or wounding, of the queen, and of misprision of such treason, where the overt acts alleged in the indictment shall be any attempt to injure her person, in which cases the prisoner is triable in the same manner, and upon the like evidence, as if charged with murder.

A bill of indictment for treason was found on the 11th of December; on the 12th, copies of the indictment and of the jury panel were delivered to the prisoner, and on the 17th a copy of the list of witnesses was delivered to him. The prisoner was arraigned on the 31st of December, and pleaded: and upon the first witness being called for the Crown, it was objected that the list of witnesses had not been delivered according to the statute. Upon a case reserved, it was holden by nine judges to six, that the delivery of the list was not a good delivery in point of law: but it was also holden, by a like majority, that the objection was too late after plea pleaded. And it was agreed by all the judges, that if the objection had been taken in due time, the only effect of it would have been a postponement of the trial, to give time for a proper delivery of the list. (*Reg. v. Frost*, 2 *Mood. C. C.* 140; 9 *C. & P.* 129.)

The 7 Will. 3, c. 3, s. 1, allows them to make their defence by witnesses on oath, and they shall have process of court to compel their witnesses to appear. Witnesses for defence.

And, by sect. 2, they shall not be attainted but on the oath of two witnesses, either both of them to the same overt act, or one of them to one and the other of them to another overt act of the same treason: unless they shall confess or stand mute, or refuse to plead, or challenge peremptorily above thirty-five of the jury. Two witnesses.

And 7 Will. 3, c. 3, enacts, that such person shall have two such counsel as they shall desire assigned them by the court, who shall have access to them at reasonable times. Counsel.

Likewise, by 20 Geo. 2, c. 30, persons impeached by the House of Commons of high treason, whereby corruption of blood shall be made, or for misprision thereof, shall be admitted to make their full defence by two counsel, who shall be assigned for that purpose, in like manner as upon indictments and other prosecutions.

By 54 Geo. 3, c. 146, "An Act to alter the Punishment in certain Cases of High Treason," reciting, "that in certain cases of high trea-



1. *High Treason.*

Form of sentence  
in case of high  
treason.

His majesty may  
alter sentence.

Ancient punish-  
ment of women.

Forfeiture.

son, as the law now stands, the sentence or judgment required by law to be pronounced or awarded against persons convicted or adjudged guilty of the said crime, in such cases, is, that they should be drawn on an hurdle to the place of execution, and there be hanged by the neck, but not until they are dead, but that they should be taken down again, and that when they are yet alive their bowels shall be taken out and burnt before their faces, and that afterwards their heads should be severed from their bodies, and their bodies be divided into four quarters, and their heads and quarters to be at the king's disposal: and that it is expedient in the said cases of high treason to alter the sentence or judgment now required by law:" it is enacted, "That in all cases of high treason, in which, as the law now stands, the sentence or judgment ordained by law is as aforesaid, the sentence or judgment to be pronounced or awarded, from and after the passing of this act, against any person convicted or adjudged guilty, shall be, that such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead; and that afterwards the head shall be severed from the body of such person, and the body, divided into four quarters, shall be disposed of as his Majesty and his successors shall think fit."

Sect. 2. In case his Majesty or his successors shall so think fit, his Majesty or his successors, after such sentence or judgment shall be pronounced or awarded, may by warrant under his or their sign manual, countersigned by one of his Majesty's principal secretaries of state, declare it to be his or their will and pleasure, and may direct and order that such person as aforesaid shall not be drawn, but shall be taken in such manner as in the said warrant shall be expressed, to the place of execution, and that such person shall not be there hanged by the neck, but that instead thereof the head shall be there severed from the body of such person whilst alive, and in such warrant may direct and order how and in what manner the body, head, and quarters of such person shall be disposed of; and it shall be lawful for the sheriff or other person or persons to whom such warrant shall be addressed, and whom it shall concern, to carry the same into execution accordingly.

The ancient judgment of a woman for high treason was to be drawn and burned. (3 *Inst.* 211.) But by 30 Geo. 3, c. 48, s. 1, women are not to be burned, but hanged.

In the said judgment is implied forfeiture of lands and goods to the king, loss of dower, and corruption of blood. (3 *Inst.* 211. See "*Attainder*," "*Forfeiture*.")

II. *Petit Treason.*

Petit treason,  
what.

Judgment.

Forfeiture.

Accessory.

Petit treason to be  
treated in all  
respects as mur-  
der.

High treason is against the king, petit treason against the subjects. (3 *Inst.* 20.)

The judgment against a man for petit treason is, that he shall be drawn to the place of execution, and there hanged by the neck till he be dead. (2 *Haw.* c. 49, s. 5.)

The consequence of attainder is, forfeiture of lands (to the lord of the fee), and of goods; loss of dower; and corruption of blood. (2 *Haw.* c. 46, s. 1. See "*Attainder*;" "*Forfeiture*.")

Although there can be no accessories in high treason, yet in petit treason there may be accessories, both before and after. (3 *Inst.* 21.)

By 24 & 25 Vict. c. 100, s. 8, every offence, which before the commencement of 9 Geo. 4, c. 31, would have amounted to petit treason, shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in murder. (See "*Homicide*.")

## III. Misprision of Treason.

Misprision cometh of the French word *mepris*, which properly signifieth neglect or contempt; and misprision of treason, in legal understanding, signifieth, when one knowing of any treason, though no party or consenter to it, yet conceals it, and doth not reveal it in convenient time. (3 *Inst.* 36; 1 *Hale*, 371.)

The judgment of misprision of treason is, to be imprisoned during life, to forfeit all his goods for ever, and the profits of his lands during life. (3 *Inst.* 36.) Judgment.

Every man, therefore, that knoweth a treason, ought with all speed to reveal it to the king, his privy council, or other magistrate. (*Hale's Sum.* 127.) Caution,

But it seemeth that misprision of petit treason is not subject to the judgment of misprision of high treason, but only is punishable by fine and imprisonment, as in the case of misprision of felony. (1 *Hale*, 375.) Misprision of petit treason.

In *East's P. C.*, Vol. I., from p. 37 to 140, will be found a very satisfactory treatise on this crime.

## IV. Discharging or Aiming, &amp;c., Fire-Arms, &amp;c., at the Queen.

By 5 & 6 Vict. c. 51, s. 2, it is enacted, That from and after the passing of this act, if any person shall wilfully discharge, or attempt to discharge, or point, aim, or present at or near to the person of the queen, any gun, pistol, or any other description of fire-arms or of other arms whatsoever, whether the same shall or shall not contain any explosive or destructive material, or shall discharge or cause to be discharged, or attempt to discharge or cause to be discharged, any explosive substance or material near to the person of the Queen, or if any person shall wilfully strike or strike at, or attempt to strike or to strike at, the person of the queen, with any offensive weapon or in any other manner whatsoever, or if any person shall wilfully throw or attempt to throw any substance, matter, or thing whatsoever at or upon the person of the Queen, with intent in any of the cases aforesaid to injure the person of the Queen, or with intent in any of the cases aforesaid to break the public peace, or whereby the public peace may be endangered, or with intent in any of the cases aforesaid to alarm her Majesty; or if any person shall, near to the person of the Queen, wilfully produce or have any gun, pistol, or other description of fire-arms, or other arms whatsoever, or any explosive, destructive, or dangerous matter or thing whatsoever, with intent to use the same to injure the person of the Queen, or to alarm her Majesty; every such person so offending shall be guilty of a high misdemeanor, and being convicted thereof in due course of law, shall be liable, at the discretion of the court before which the said person shall be so convicted, to be transported beyond the seas for the term of seven years (a), or to be imprisoned, with or without hard labour, for any period not exceeding three years, and during the period of such imprisonment, to be publicly or privately whipped, as often and in such manner and form as the said court shall order and direct, not exceeding thrice.

Sect. 3. Provided, that nothing herein contained shall be deemed to alter in any respect the punishment which by law may now be inflicted upon persons guilty of high treason or misprision of treason. Discharging or aiming fire-arms, or throwing or using any offensive matter or weapon, with intent to injure or alarm her Majesty.

By 5 & 6 Vict. c. 38, s. 1, this offence is not triable at any quarter sessions. Punishment.

Not to alter punishment for high treason.

Offence not triable at sessions.

(a) See now "Penal Servitude."

## 5. Forms.

## V. Forms.

(1.) Commitment for high treason, by compassing the Queen's death.

Commencement as usual.]—on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_, at the parish of \_\_\_\_\_, in the said county, maliciously and traitorously did compass, imagine, devise, and intend, to depose our sovereign lady Queen Victoria, from the royal state, title, power, and government of this realm, and from the style, honour, and kingly name of the imperial crown thereof, and to bring and put our said lady the Queen to death; against the form of the statute in that case made and provided. And you, the said keeper, &c. [as usual, to the end.]

2.) Indictment for a like offence.

—(venue) *The jurors for our lady the Queen upon their oath present, that C. D., late of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of our lady the now Queen Victoria, a subject of our said lady the Queen then being, not regarding the duty of his allegiance, nor having the fear of God in his heart, but being moved and seduced by the instigation of the devil, as a false traitor against our said lady the Queen, and wholly withdrawing the allegiance, fidelity, and obedience, which every true and faithful subject of our said lady the Queen should and of right ought to bear towards our said lady the Queen, on \_\_\_\_\_, and on divers other days, as well before as after, with force and arms, at the parish aforesaid, in the county aforesaid, maliciously and traitorously, together with divers other false traitors, to the jurors aforesaid unknown, did compass, imagine, devise, and intend, to depose our said lady the Queen from the royal state title, power, and government of this realm, and from the style, honour, and kingly name of the imperial crown thereof, and to bring and put our said lady the Queen to death: and the said treasonable compassing, imagination, device, and intention, then and there maliciously and traitorously did express, utter, declare, and evince, by divers overt acts and deeds hereinafter mentioned (that is to say), in order to fulfil, perfect, and bring to effect his most evil and wicked treason, and treasonable compassing, imagination, device, and intention aforesaid, he, the said C. D., as such false traitor as aforesaid, afterwards, to wit, on the said \_\_\_\_\_, and on divers other days, as well before as after, with force and arms, at the parish aforesaid, in the county aforesaid, maliciously and traitorously did conspire, consult, consent, and agree with one A. B., E. F., and divers other false traitors, to the jurors aforesaid unknown, to raise, levy, and make insurrection, rebellion, and war, within this kingdom, against our said lady the Queen: and, further to fulfil, perfect, and bring to effect, his most evil and wicked treason, and treasonable compassing, imagination, device, and intention aforesaid, he, the said C. D., as such false traitor as aforesaid, afterwards, to wit, &c. &c. [stating other overt acts, and conclude thus:] in contempt of our said lady the Queen and her laws, to the evil example of all others in the like case offending, contrary to the duty of the allegiance of him, the said C. D., against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity. (See a variety of forms, 2 Chit. C. L. and Jervis's Archb. Crim. Law.)*

## Treasure Found.

Treasure trove, what.

**TREASURE** trove, or treasure found, is where any money or coin, gold, silver, plate, or bullion, is found hidden in the earth, or other private place, the owner thereof being unknown; in which case, the treasure belongs to the Queen, (or to some other by the Queen's grant or prescription): but if he that hid it be known, or afterwards found out, the owner and not the Queen is entitled to it. (1 Bla. Com. 295.)

Also, if it be found in the sea, or upon the earth, it doth not belong to the queen, but to the finder if no owner appears. So that it seems it is the hiding, not the abandoning of it, that gives the Queen a property. (*Id.*)

This difference arises from the different intentions which the law implies in the owner. A man that hides his treasure in a secret place evidently doth not mean to relinquish his property, but reserves a right of claiming it again when he sees occasion; and, if he dies, and the secret also dies with him, the law gives it to the Queen, in part of her royal revenue. But a man that scatters his treasure into the sea, or upon the public surface of the earth, is construed to have absolutely abandoned his property, and returned it into the common stock, without any intention of reclaiming it; and therefore it belongs, as in a state of nature, to the first occupant or finder, unless the owner appear and assert his right, which then proves that the loss was by accident, and not with an intent to renounce his property. (1 *Blu. Com.* 295.)

Larceny cannot be committed of such things whereof no man hath any determinate property, though the things themselves are capable of property, as of treasure trove, or wreck, till seized; though he that hath them in point of franchise may have a special action against him that takes them. (1 *Hale*, 510.)

The punishment for concealment of treasure trove is by fine and imprisonment. (3 *Inst.* 133.)

And it belongeth to the coroner to inquire thereof. (*Id.*)

Concerning which it is enacted by the 4 *Edw. 1. st. 2*, that a coroner, being certified by the king's bailiffs, or other honest men of the country, shall go to the places where treasure is said to be found. And it is further enacted in the same statute, that the coroner ought to inquire of treasure that is found, who are the finders, and likewise who is suspected thereof, and that may be well perceived, where one liveth riotously, haunting taverns, and hath done so of long time; hereupon he may be attached for this suspicion by four or six, or more pledges, if they may be found. (See further "*Coroner.*")

Taking treasure trove, not felony.  
The coroner may inquire thereof.

Also, it seems to be agreed, that all seizures of treasure trove, belonging to the Queen, may be inquired of in the sheriff's torn. But it seems questionable, whether a prescription in a court leet, to inquire of such seizure belonging to the lord of it, being a subject, be good or not, since it is against the general rule of the law for the leet to take cognizance of trespasses done to the private damage of the lord, because that would make him his own judge. (2 *Haw. c. 10, s. 57.*)

Also the sheriff in his torn.

## Trespasses.

AS to Malicious Trespasses done to property, and how punishable on summary conviction, &c., see "*Malicious Injuries to Property.*"

As to the liability of magistrates to an action for, see "*Justices of the Peace.*"

No indictment lies for a mere civil trespass committed to land or goods, unaccompanied with circumstances constituting a breach of the peace; (see *R. v. Osborn*, 3 *Burr.* 1701; *R. v. Wilson*, 8 *T. R.* 357; *R. v. Turner*, 13 *East*, 228;) but as to forcible entries and detainers, see "*Forcible Entry and Detainer.*"

Nor can a party be imprisoned for a mere civil trespass. (*Id.* And see *Williams v. Glennister*, 4 *D. & R.* 217; 2 *B. & C.* 699. "*Arrest.*")

## Trial.

[See further as to the trial of offences at the Sessions, "Sessions."]

Time of trial.

*Time of.*]—In felonies, it is always the practice to try the defendant at the same assizes. (1 *Chit. C. L.* 483.)

In misdemeanors, also, since the 14 & 15 Vict. c. 100, sec. 27, there is now no distinction in practice in this respect, whether at the assizes or sessions. (See "*Traverse.*")

In capital cases, the court will not appoint the time of trial, unless the defendant be brought to the bar, and be personally in court, when the rule is made for the purpose. (*R. v. Johnson*, 2 *Str.* 826.)

Notice of trial.

Where the traverse is sent down from the Crown-office, the same notice is in general requisite as in civil proceedings (*Cro. C. C.* 9.) This, by the Common Law Procedure Act, 1852, is ten days notice, in all cases whether at bar or nisi prius in town or country, unless otherwise ordered by the court or a judge. If an indictment be removed by *certiorari* at the instance of the defendant, and be entered for trial on the *nisi prius* side of the assizes by the defendant, the judge will not stop the case from being tried on a motion on the part of the prosecution, on the ground that the prosecutor has not had sufficient notice of trial; but, if the defendant is acquitted, no one appearing for the prosecution, it will be a mistrial if proper notice of trial had not been given. (*R. v. Hair*, 1 *C. & K.* 389.) The notice of trial, when the defendant is indicted before the justices of oyer and terminer, should specify the nature of the offence for which he is to be tried before them. (*Cro. C. C.* 21.) And it has been held at sessions, that such notice should be signed by the defendant himself, and not by his solicitor. (1 *Chit. C. L.* 2 *ed.* 488.) Personal service on the party should be made.

Notice of trial  
where prosecutor  
cannot be found.

If the prosecutor cannot be found, on the attempt to serve the notice of trial upon him, the person who made such attempt must make an affidavit that he has ineffectually endeavoured to serve the prosecutor. (*Cro. C. C.* 21.) Upon this the defendant, by his counsel, may move the court at sessions, that service of notice at the office of the clerk of the peace may be deemed good service; and when an order has been obtained, the defendant sticks up a copy of it, and of notice of trial, in the office of the clerk of the peace. The court may also be moved to respite the recognizance, and for a rule or order that service of a new notice, at the prosecutor's last or usual place of abode, shall be deemed good for the sessions ensuing. Upon this motion, the court will make an order, in which such second notice will be declared to be valid. When this is obtained, the defendant should serve a copy of the order, together with another notice, at the place of residence which it mentions; he should also take out a venire, enter his traverse, and be prepared with a second affidavit, stating the order, the notice, and the service, to produce at the ensuing sessions; when, if the prosecutor still neglects to appear, the court will direct the defendant to be acquitted. (*Cro. C. C.* 21; 1 *Chit. C. L.* 489.)

Besides the respiting of the recognizance, which is in this case allowed, after the attempt to serve the first notice, the same indulgence will frequently be granted, on motion, upon indictments for nuisances, or suffering highways to continue in bad repair, in order to give the defendants an opportunity of removing the causes for which they are indicted; and to obtain the certificate of magistrates that they have done so, upon which the defendants will, in general, merely be subject to a nominal fine. (*Dick. Sess.* 140.) The reason for this practice is, that such prosecutions are carried on rather for the suppression of public grievances, than for the punishment and example of

offenders; and all the ends of justice are sufficiently answered by a removal of the ground of the proceedings.

Where an indictment for a misdemeanor has been removed by *certiorari*, and the defendants have entered into recognizances to appear and try the indictment, the prosecutor has a right to enter it for trial, and whichever party enters it for trial has a right to try it in its turn, as in that respect an indictment so removed has all the incidents of a civil action. Where, therefore, there were two indictments for conspiracy arising out of the same transactions, one against D. and others, and the other against R. and others, and they were entered by the prosecutor in that order, numbers "2" and "3" in the cause list, and the defendants subsequently entered the cases as Nos. "10" and "13" in the list, placing the prosecution against R. and others first: it was held that the prosecutor had the right of trying the indictments in the order entered by him. (*R. v. Duffield*, 5 Cox's C. C. 286.)

Right of defendants to enter and try indictment when removed.

*Steps preliminary to.*—At the assizes, the defendant intending to try, must go before the clerk of assize, and take out a copy of the proceedings drawn out of record, for which he is to pay after the rate established by custom. At the same time, he must also sue out a *venire*, for the sheriff to return a jury, which the clerk is empowered to award. He may also obtain his subpoenas for witnesses from the same officer. After the *venire* is procured, it must be delivered to the under-sheriff, who will return a jury. (*Cro. C. C.* 9.) When all these requisites have been obtained, the traverse must be duly entered with the judge's marshal; for unless this form has been complied with, the defendant has no right to insist on his trial. (1 *Leach*, 111; *Cro. C. C.* 9.)

Steps preparatory to trial.

The proceedings at the sessions are similar, except that the descriptions of the officers differ, the clerk of the peace being substituted for the clerk of assize; the subpoenas of the latter running only in the same county, if the witnesses reside beyond it, application must be made to the Crown-office; (*Cro. C. C.* 21;) this has been held still to be required, although 45 Geo. 3, c. 92, ss. 3, 4, was passed to give effect to service of subpoena in one part of United Kingdom to give evidence in another. (See *R. v. Brownell*, 1 A. & E. 598.)

*Putting off.*—There are several cases in which, upon a proper application, the court will put off the trial. And it has been laid down that no crime is so great, and no proceedings so instantaneous, but the trial may be put off, if sufficient reasons are adduced to support the application; (*per Lord Mansfield*, 1 *Bla. Rep.* 514; 3 *Burr.* 1514; *Fost.* 2;) and it should seem that the trial of a collateral issue, as the identity of the prisoner, may be put off on a positive affidavit, but not otherwise; because, as the prisoner's life is not in jeopardy on that issue, there is no occasion to allow indulgence, unless the defendant will swear to the fact himself. (1 *Bla. Rep.* 4, 5, 6; but see *Lord Kenyon's observations on this case*, *Peake's Rep.* 97, 8.)

Putting off trial.

Grounds for.

A trial of a prisoner for carnally knowing and abusing a girl of six years old, was not allowed to be postponed to enable the girl to be instructed as to the nature of an oath; but it was said that there might be cases where the intellect of the child was much more ripened, as in the cases of children nine, ten, or twelve years old, when a postponement might be permitted if their education had been so neglected as that they were wholly ignorant on religious subjects. (*R. v. Nicholas*, 2 C. & K. 247.)

In general, the trial may be postponed, on the ground of the publication of a libel, tending to influence the minds of the jurors in forming their decision; (4 *T. R.* 285; 1 *Burr.* 510, 511; *Bac. Abr. Trial H.*; 3 *B. & Bing.* 272;) and the existence of a prejudice in the

Where jury may be influenced.

Illness of defendant's attorney.

Where accomplice confesses his guilt.

Where witness cannot be legally sworn.

On plea of autrefois acquit, &c. when not properly pleaded.

Absence of witness.

Practice as to application for putting off the trial.

Affidavit for.

Putting off.

jury will furnish a ground for putting off the trial. (*Reg. v. Bolam*, 2 *M. & Rob.* 192.) The illness of the defendant's attorney has been allowed to operate in a similar occasion. (*Say. Rep.* 63; *Bac. Abr. Trial H.*) And where an accomplice fully and fairly discloses the joint guilt of himself and his companions, and is admitted by justices of the peace to bear testimony against his fellows, by which he acquires an equitable claim, though no absolute right, to the mercy of the crown, the court will put off the trial, in order to enable him to apply for a pardon. (*Cowp.* 339, 340; 1 *Leach*, 125.) And where a material witness, upon being examined, appears to have no sense of the obligation of an oath, or of a future state of retribution, so that he cannot legally be sworn, the court may put off the trial, even in a capital case, and order him to be in the meantime instructed by a clergyman in the principles of moral obligation. (1 *Leach*, 430, n. (a).)

On a plea of autrefois acquit, or convict improperly pleaded, the court will in some instances postpone the trial, to enable the prisoner to plead it properly. (See *R. v. Bowman*, 6 *Carr. & P.* 101; *R. v. Chamberlain*, *Id.* 93.)

But the most usual ground for the delay is the unavoidable absence or illness of a material witness, which, if properly verified, will be sufficient, on an indictment for treason, felony, or misdemeanor, at the instance of a defendant, though the prosecution is carried on at the public expense. (*Bac. Abr. Trial, H.*; *Foster*, 2; *R. v. D'Eon*, 3 *Burr.* 1514; *R. v. Jolliffe*, 4 *T. R.* 285; *R. v. Street*, 2 *C. & P.* 413; *R. v. Chapman*, 8 *C. & P.* 558.) If, however, a witness was not absent at the time notice of trial was given, it seems the court will not grant the application on account of any subsequent absence. (*Barnes*, 442; *Bac. Abr. Trial, H.*) And where the witnesses are in a foreign country, and not likely shortly to come hither, the court have refused to allow it; (3 *Burr.* 1514, 15; 1 *Bla. Rep.* 510; 8 *East*, 37;) though as the witnesses may be examined on interrogatories sent out abroad, it should seem that when the evidence is very material, the trial may be delayed till such examination has been obtained. (2 *M. & Sel.* 602; 1 *Bla. Rep.* 512.) *Sed quere*, if the court will put off the trial until the witnesses are examined, but only to a definite period. (1 *Chit. Rep.* 685.) And in prosecutions for a misdemeanor, committed in the East or West Indies, in a public capacity, the defendant, under the 13 Geo. 3, c. 63, and 42 Geo. 3, c. 85, is, on a special affidavit of the absence of material evidence, entitled, in the discretion of the Court of Queen's Bench, to put off the trial, and obtain a mandamus for the examination of the witness abroad, and the prosecutor may obtain such mandamus and delay as a matter of course. (8 *East Rep.* 31; *R. v. Jones*.) But when the defendant has been guilty of laches or delay, the court will refuse to put off the trial (1 *Bla. Rep.* 514), or at least will impose terms upon him, as that he shall consent to examine upon interrogatories a material witness for the crown. (2 *M. & Sel.* 602.) And it is the constant practice at the Old Bailey, not to put off trials on account of the absence of witnesses to character, only on account of the facility of making such application, in delay of justice with that promptness, so necessary to the intimidation of offenders. (8 *East Rep.* 34; *R. v. Valentine Jones*.)

Before any application can be made to postpone the trial, notice must be given to the opposite party, in order that he may attend and oppose it; and in the Queen's Bench, a rule nisi must be obtained. (*Cro. C. C.* 22. See *form*, *Cro. C. C.* 299; *Tidd's App.* 312.) Upon this an affidavit must be made, stating the names and places of abode of the absent witnesses, and that they are material to the prosecution or defence. (8 *East* 35, 6, 33; *Fost.* 2.) Affidavits in corroboration may be filed. (1 *Kenyon's Rep.* 356.) It is, in general, necessary in the affidavit of the absence of a material witness, to state at what

time his return may be expected; (1 *Bla. Rep.* 514; *Bac. Abr. Trial, H.*;) but this may be, in some cases, dispensed with; as if he is on board a ship in her Majesty's service, in which case the party making the affidavit cannot swear this, because he is ignorant of the instructions given to the commander. (1 *Barnard*, 39; *Bac. Abr. Trial, H.*) And it seems that an affidavit, stating the witness is not expected to return till a particular day, is sufficient, it being an implied assertion, that he is expected at that time. (1 *Chit. Rep.* 730, n.; 2 *Chit. Rep.* 411, *S. C.*) And in civil cases, it is not necessary to mention in the affidavit the name of the witness. (2 *Dow. & Ry.* 420; 4 *Dow. & Ry.* 832, notes.) It is also said to be necessary for the oath to be positive, that the witness absent is material, and not merely that the deponent believes him to be so; for nothing is more easy than generally to swear to a belief of this description. (1 *Bla. Rep.* 514; *Bac. Abr. Trial, H.* But see *Peake's Rep.* 97, 8.) In some cases, the sources of the proposed required evidence should be stated with punctuality. (4 *Dow. & Ry.* 830.) When there is no cause for suspicion of mere desire to delay, it will be sufficient generally to swear that the absent party is a material witness, without whose evidence the party cannot safely proceed to trial; that he has endeavoured, without effect, to serve him with a subpoena: and that there is a reasonable ground to expect his future attendance. (3 *Burr.* 1513; 8 *East*, 37; *Bac. Abr. Trial, H.*) And the affidavit should also state the notice to the opposite party, and the service of it upon him. But if there is any cause of suspicion, the court will require the circumstances to be specifically stated, on which the application is grounded; that the party absent is a material witness; that the applicant has used all his exertions to procure his attendance; and that there is a reasonable expectation of his being able to attend at the time to which the trial is proposed to be deferred. (1 *Bla. Rep.* 436, 514; 8 *East Rep.* 31, 37; 3 *Burr.* 1514; *Bac. Abr. Trial, H.*) It must, in general, be made by the party applying; (*Barnes*, 437; *Bac. Abr. Trial, H.*;) though, in some cases, his attorney, (*Peake, N. P.* 97,) or a third person, has been allowed to do it in his stead, as if he be abroad, or unable to appear. (*Barnes*, 448; *Bac. Abr. Trial, H.*)

The application should regularly be made two days at least before the intended trial; (*Barnes*, 437, 442, 444;) but when the necessity of the witness was not known until afterwards, it may be applied for at a nearer period. (*Barnes*, 452; *Peake, N. P.* 97; 1 *Esp. Rep.* 125; *Bac. Abr. Trial, H.*) When the application is delayed till the trial is called on, a motion must be made by counsel, and the prosecutor will be entitled to the costs of the day upon the delay being conceded. (1 *Esp. Rep.* 125; 1 *Chit. C. L.* 494.)

When the motion is granted, it is seldom for more than the next term or the ensuing assizes. But, upon the particular circumstances of the case, the court will make a rule for putting off the trial of an issue to a more distant time of decision. (*Bac. Abr. Trial, H.*)

If the application is made by the defendant he shall be remanded and detained in custody until the next assizes or sessions; but where the application is made by the prosecutor, it is in the discretion of the court either to detain the defendant in custody, or admit him to bail, or to discharge him on his own recognizances. (*R. v. Beardmore*, 7 *C. & P.* 497; *R. v. Parish, Id.* 782; *R. v. Osborn, Id.* 799; *Reg. v. Bridgman*, 1 *C. & Mar.* 271.) After a bill has been found, if the offence be of a serious nature, the court will not admit the prisoner to bail. *Reg. v. Chapman*, 8 *C. & P.* 558; *Reg. v. Guttridge*, 9 *C. & P.* 228; *Reg. v. Owen, Id.* 83; *Reg. v. Bowen, Id.* 509.) In *R. v. Palmer* (6 *C. & P.* 652,) the judges of the Central Criminal Court postponed until the next session the presentment of a bill for a capital offence to the grand jury, upon the ground of the illness of a witness sworn to

Time of making application for.

Till when put off

When defendant in custody, bailing him.



be material, and refused to examine her deposition to ascertain whether she deposed to material facts. (*Jervis Arch.*)

Where a party bound to appear is so ill that his life would be endangered by his removal, an affidavit should be made by his medical attendant to prevent his recognizance from being estreated. (*Toone, 7. See form, Id.*)

- Place of trial.** *Place of.]*—We have already considered the place of trial, while treating of the venue, under title “*Indictment.*”
- Changing place of.** As to changing the place of trial, see 1 *Chit. C. L.* 495, and the Court of Queen’s Bench has jurisdiction to change the place of trial in felonies and misdemeanors, whenever it is necessary for the purpose of securing, as far as possible, a fair and impartial trial. (*Per Lord Denman, C. J., 5 B. & Ad. 354.*)
- By 19 & 20 Vict. c. 16, the Court of Queen’s Bench is empowered to order any indictment or inquisition for any felony or misdemeanor committed out of the jurisdiction of the Central Criminal Court when removed by certiorari into the Court of Queen’s Bench to be tried at the Central Criminal Court, if it appear expedient to the ends of justice. As to removal of indictment by certiorari, see “*Certiorari.*”
- Reading indictment.** On a trial of felony the prisoner is entitled to have the indictment read slowly over once, and once only. (*R. v. Dowling, 3 Cox’s C. C. 509.*)
- Copy of indictment and jury panel.** A prisoner indicted for felony is not entitled to a copy of the indictment found against him, or to a copy of the jury panel, or two copies of the panels returned at a former session of the court. (*R. v. Mitchell, 3 Cox’s C. C. 1.*)
- List of witnesses.** A prisoner indicted for felony is not entitled to a list of the names and addresses of the witnesses on the back of the indictment, but he will be allowed to inspect the indictment for the purpose of seeing the names of seeing the names of such witnesses. *R. v. Lacey, 3 Cox’s C. C. 517.*) The rule as to calling the witnesses on the back of the indictment is, that the prosecutor is not bound to call them, but he ought to have them in court that the prisoner may call them if he pleases, and the presiding judge will sometimes, in the exercise of his discretion, direct them to be called before the prosecution closes, so that they may at least be cross-examined on behalf of the prisoner. (*R. v. Woodhead, 2 C. & K. 520.*)
- Calling witnesses.** By 24 & 25 Vict. c. 96, s. 116, the proceedings upon any indictment for committing any offence after a previous conviction or convictions shall be as follows; (that is to say,) the offender shall in the first instance be arraigned upon so much only of the indictment as charges the subsequent offence, and if he plead not guilty, or if the court order a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to inquire concerning such subsequent offence only; and if they find him guilty, or if on arraignment he plead guilty, he shall then, and not before, be asked whether he had been previously convicted as alleged in the indictment, and if he answer that he had been so previously convicted, the court may proceed to sentence him accordingly; but if he deny that he had been so previously convicted, or stand mute of malice, or will not answer directly to such question, the jury shall then be charged to inquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall for all purposes be deemed to extend to such last-mentioned inquiry: Provided, that if upon the trial of any person for any such subsequent offence such person shall give evidence of his good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before such verdict of guilty shall be returned, and the jury shall inquire concerning such previous conviction or convic-
- How prisoner is to be arraigned, and when previous conviction is to be proved on the trial.**

tions at the same time that they inquire concerning such subsequent offence.

Where the counsel for several prisoners cannot agree as to the order in which they are to address the jury, the court will call upon them, not in the order of their seniority, but in the order in which the names of the prisoners stand in the indictment. But where the counsel for one prisoner has witnesses to facts to examine, the counsel for another cannot be allowed to postpone his address to the jury until after those witnesses have been examined. (*R. v. Barber*, 1 *C. & K.* 434.) Practice where defendants sever.

Where a prisoner has been put upon his trial for a capital offence, and the jury, after the lapse of a reasonable time, are unable to agree in a verdict, it is in the discretion of the presiding judge to discharge him if he thinks a case of necessity for doing so is made out. The fact of a jury having been locked up from 2 P.M. to 8 A.M. on the following morning, and there being then no prospect of their agreeing, the judge being required to be present at the next circuit town on that day, is cause sufficient to justify the discharge of the jury. (*R. v. Newton*, 18 *L. J. M. C.* 201.) Discharging jury.

*Adjournment of.*—If the trial cannot be concluded in one day, the court may adjourn from day to day until it can be completed. (*R. v. Stone*, 6 *T. R.* 530; *R. v. Edwards*, 4 *Taun.* 311.) When this is the case, the jury shall all retire together, to some adjoining tavern, where accommodations are prepared for them, and the bailiffs are sworn “well and truly to keep the jury, and neither to speak to them themselves, nor suffer any other person to speak to them, touching any matter relative to this trial.” (*R. v. Stone*, 6 *T. R.* 530.) And if the jury separate, and one of them converse respecting the verdict with a stranger, the verdict will be bad, and a *venire de novo* awarded. (*R. v. Fowler*, 4 *B & Al.* 273; *R. v. Kinnear*, 2 *B & Al.* 463; 1 *Chit.* 401.) Adjournment.

*Withdrawing Record.*—When the party who has given notice of trial is not ready to proceed to trial of an indictment or information for a misdemeanor at the time appointed in the notice of trial, he may withdraw the record; but then he must pay the costs to the other party, unless he countermand his notice of trial in time to prevent any extra expenses. (*R. v. Edwards*, 1 *Salk.* 193; 1 *Stra.* 33; 8 *East*, 270.) Withdrawing record.

In the Queen’s Bench, when the *defendant* has brought the prosecutor to trial, the record cannot be withdrawn on the part of the prosecutor; but if the prosecutor be not prepared to produce evidence, the defendant must be acquitted. (*Per Lord Ellenborough in Rex v. Smith, Sitting at Westminster*, 10th July, 1816.) And we have seen, that where there are two indictments entered for trial, to be tried by special juries, they must be tried in the order they stand on the list: and the prosecutor cannot, by withdrawing the first record, reverse the order of trial. (1 *Stark. C. N. P.* 63.)

*Arraignment.*—As to the arraignment of the prisoner, and the proceedings at the trial until the verdict and sentence, inclusive, see “Sessions,” “Arraignment.” Arraignment and proceedings at the trial.  
Verdict, &c.

Forms.Forms.

(1.) Prosecutor's notice in Queen's Bench of trial of misdemeanor at sittings after term.

*Middlesex.*

*The Queen  
against  
C. D.*

*Whereas in Trinity Term last an indictment was preferred and found against you the above-named defendant for certain misdemeanors, in publishing certain libels, to which indictment you appeared and pleaded not guilty, in person, in her Majesty's Court of Queen's Bench, at Westminster, and you will now take notice, that you will be tried upon the same indictment at the sittings of Nisi Prius to be held after this present Michaelmas term, in the said court at Westminster, in and for the county of Middlesex. Dated this                      day of*

18 .

*Yours, &c.,*

*E. F.,*

*Attorney for the prosecution.*

*To Mr. C. D.*

*The above-named defendant.*

(2.) Notice in Queen's Bench by defendant's clerk in court, to defendant's solicitor, that prosecutor has given notice of trial for sittings after term in Middlesex.

*In the Queen's Bench.*

*The Queen  
against  
C. D.*

*Sir,—Notice of trial is given by the prosecutor for the sitting of Nisi Prius, to be holden after this term in and for the county of Middlesex.*

*I am, yours, &c.,*

*E. F.*

*Crown Office,  
Jan. 18 .*

(3.) Notice by clerk in court of defendant, to defendant's solicitor, of the countermand of notice of trial.

*In the Queen's Bench.*

*The Queen  
against  
C. D.*

*Sir,—The notice of trial given by the prosecutor for the sitting of Nisi Prius, to be holden after this term, in and for the county of Middlesex, is this day countermanded.*

*I am, Sir, yours,*

*E. F.*

*Crown Office,  
Jan. 18 .*

(4.) Notice to put off trial for absence of material witnesses.

*The Queen  
v.  
C. D.*

*Take notice, that a motion will be made on                      the                      day of March instant, or as soon after as counsel can be heard, that the trial of this indictment may be put off until the next summer assizes to be held in and for the county of York, on account of the absence of two material witnesses on behalf of the defendant. Dated this                      day of                      18 .*

*Yours, &c.,*

*E. F.,*

*Attorney for the above-named defendant.*

*To Mr. G. H.,*

*Attorney for the prosecutor.*

## Usury.

IT seems that the taking of exorbitant, or as it was called Jewish interest, was a misdemeanor at common law before the enactment of the prohibitory statutes against it. (*Hardr.* 420.) It is indeed laid down by some writers, that the taking any consideration for the loan or forbearance of money was an offence cognizable by the ecclesiastical courts, and liable to severe spiritual censures. (*Hawke. b. 2, c. 82, s. 4.*) Now by 17 & 18 Vict. c. 90, "An act to repeal the Laws relating to Usury and to the Enrolment of Annuities," the several acts relating to usury in the schedule thereto, and all existing laws against usury are repealed.

How far usury an offence at common law.

## Vagrants.

[43 Geo. 3, c. 61; 4 Geo. 4, c. 64, s. 7; 5 Geo. 4, c. 83; 1 & 2 Vict. c. 38; 7 & 8 Vict. c. 101.]

THE act now in force, which consolidates, amends, and repeals the prior statutes relative to vagrants, is 5 Geo. 4, c. 83: "An Act for the Punishment of Idle and Disorderly Persons, and Rogues and Vagabonds, in that Part of Great Britain called England," recites 3 Geo. 4, c. 40, (in force until 1st Sept. 1824); and that it is expedient to make further provision for the suppression of vagrancy, and for the punishment of idle and disorderly persons, rogues, and vagabonds, and incorrigible rogues, in England; and then repeals all provisions theretofore made relative to idle and disorderly persons, rogues, and vagabonds, incorrigible rogues, or other vagrants, in England.

5 Geo. 4, c. 83.

Former provisions repealed.

Division of subject.

By this statute three classes of vagrants are named, viz., 1st, idle and disorderly persons; 2nd, rogues and vagabonds; 3rd, incorrigible rogues. We will treat of this subject in the following order:—

I. *Idle and Disorderly Persons*, p. 1040.

[5 Geo. 4, c. 83, s. 3.]

II. *Rogues and Vagabonds*, p. 1041.

[5 Geo. 4, c. 83, s. 4; 1 & 2 Vict. c. 38, s. 2.]

III. *Incorrigible Rogues*, p. 1043.

[5 Geo. 4, c. 83, ss. 5, 10.]

IV. *Search for and Apprehending Offenders, &c.*, p. 1044.

[5 Geo. 4, c. 83, ss. 6, 7, 8, 13; 4 Geo. 4, c. 64.]

V. *Recognizances to prosecute, and Expenses of Prosecution*, p. 1046.

[5 Geo. 4, c. 83, s. 9.]

VI. *Constables Neglecting Duty—Obstructing them—Their Expenses*, p. 1046.

[5 Geo. 4, c. 83, ss. 11, 12.]

VII. *Certificates to ask Alms*, p. 1047.

[5 Geo. 4, c. 83, ss. 15, 16.]

VIII. *Form, &c. of Conviction*, p. 1048.

[5 Geo. 4, c. 83, s. 17.]

IX. *Appeal*, p. 1048.

[5 Geo. 4, c. 83, s. 14 ; 1 &amp; 2 Vict. c. 38, s. 1.]

X. *Limitation, &c. of Actions—Treble Costs, &c.*, p. 1050.

[5 Geo. 4, c. 83, ss. 18, 19.]

XI. *Removal of Convicts to their Settlements*, p. 1050.

[5 Geo. 4, c. 83, s. 20.]

XII. *General Saving and Exemptions from the Vagrant Law*, p. 1050.

[43 Geo. 3, c. 61 ; 5 Geo. 4, c. 83, s. 21.]

XIII. *Forms*, p. 1050.I. *Idle and Disorderly Persons.*

5 Geo. 4, c. 83.

Persons committing certain offences to be deemed idle and disorderly persons.

The 3rd sect. enacts,—1. That every person being able wholly or in part to maintain himself or herself, or his or her family, by work or by other means, and wilfully refusing or neglecting so to do, by which refusal or neglect he or she, or any of his or her family whom he or she may be legally bound to maintain, shall have become chargeable to any parish, township, or place; [A man is not liable to the penalty of this act, for neglecting and refusing to maintain his wife, who has left him and committed adultery, although he himself has been guilty of adultery since her departure. (*R. v. Flintan*, 1 B. & Ad. 227.) *Et per Bayley, J.*—This is a very clear case. By the 5 Geo. 4, c. 83, s. 3. a man is criminally answerable for refusing to maintain any of his family, whom he is legally bound to maintain. That obligation must be made out; and it is not established in the case of a wife who has left her husband and lives in adultery.]

2 Every person returning to and becoming chargeable in any parish township, or place, from whence he or she shall have been legally removed by order of two justices of the peace, unless he or she shall produce a certificate of the churchwardens and overseers of the poor of some other parish, township, or place, thereby acknowledging him or her to be settled in such other parish, township, or place; [Where a person who rented and resided on a tenement of 10*l.* a-year value, having been removed to another parish returned to the same tenement, the court said that the order of removal, though unappealed from, did not dissolve the contract, and that he could not be considered as returning in a state of vagrancy. (*R. v. Fillongly*, 2 Term. Rep. 709.) A person finding work on his return, it seems, cannot be considered in a state of vagrancy. (*Mann v. Davers*, 3 B. & Al. 103. See further, title "*Poor*."] The commitment must state to what place the pauper returned. (*R. v. Cole*, 2 Noll. P. L. 255, 258.)]

3. Every petty chapman or pedlar wandering abroad and trading, without being duly licensed, or otherwise authorised by law;

4. Every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner;

5. And every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing, or procuring, or encouraging any child or children so to do;

6. [And every person asking alms under a certificate or other instrument prohibited by the act; s. 16.]

Shall be deemed an idle and disorderly person within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by his own view, or by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month.

By 7 & 8 Vict. c. 101, s. 6. Every woman neglecting to maintain her bastard child, being able wholly or in part so to do, whereby such child becomes chargeable to any parish or union, shall be punishable as an idle and disorderly person under the provisions of 5 Geo. 4, c. 83.

And by sect. 55, If any poor person return and become chargeable in the asylum (for houseless poor) of any district after removal from any parish in such district, he shall be deemed to have returned and become chargeable, without any certificate, to the parish whence he has been legally removed by order of two justices of the peace, within the meaning of the said act, 5 Geo. 4, c. 83.

By the 4 Geo. 4, c. 64, s. 7, all idle and disorderly persons, rogues and vagabonds, incorrigible rogues, and other vagrants, are to be committed to houses of correction, and not to the common gaols. (See "Gaols.")

A summons must precede the commitment, or else the party must appear. (See *R. v. Constable*, 7 D. & R. 663, ante "Summons," "Conviction.")

The commitment must be for a precise definite time, to be specified in the warrant of commitment. (*Baldwin and others v. Blackmore, Esq.*, 1 Burr. 596; *S. P. R. v. J. Hall*, 3 Burr. 1636.) If for deserting a family, the warrant must state that they were chargeable. (*R. v. Hall*, 3 Burr. 1636.) It must also state that the defendant had been convicted of the offence, and not merely that he had been charged. (*R. v. Rhodes*, 4 T. R. 220; *R. v. Hooper*, 6 T. R. 225.) The offence must also clearly appear to be such within the act. (*Reg. v. Cavanagh*, 1 Dowl. N. C. 546, *infra*.) It must also show the authority of the convicting justice. (*R. v. York*, 5 Burr. 2684. See further as to the form of the commitment, title, "Commitment for Safe Custody.")

1. Idle and Disorderly Persons.

How punished.

Summons.  
Form of commitment.

## II. Rogues and Vagabonds.

By 5 Geo. 4, c. 83, s. 4,—1. Every person committing any of the offences hereinbefore mentioned, after having been convicted as an idle and disorderly person;

2. Every person pretending or professing to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any of his Majesty's subjects;

3. Every person wandering abroad and lodging in any barn or out-house, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself;

4. Every person wilfully exposing to view, in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition; [See this extended to exposing indecent prints, &c., in shops, by 1 & 2 Vict. c. 38, *post*, p. 1043.]

5. Every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in the

5 Geo. 4, c. 83.  
Persons committing certain offences to be deemed rogues and vagabonds.

2. *Rogues and Vagabonds.*

5 Geo. 4, c. 83.

view thereof, or in any place of public resort, with intent to insult any female; .

6. Every person wandering abroad, and endeavouring by the exposure of wounds or deformities, to obtain or gather alms;

7. Every person going about as a gatherer or collector of alms, or endeavouring to collect charitable contributions of any nature or kind, under any false or fraudulent pretence; [See *Reg. v. Cavanagh, infra.*]

8. Every person running away and leaving his wife, or his or her child or children, chargeable, or whereby she or they, or any of them, shall become chargeable to any parish, township, or place; [This applies to the desertion of legitimate, and not of illegitimate children. (*Reg. v. Maude, 2 Dowl. N. S. 58.*)]

9. Every person playing or betting in any street, road, highway, or other open and public place, at or with any table or instrument of gaming, at any game, or pretended game of chance; [See "*Gaming.*" In *R. v. Clarke, (1 Cowp. 35.)* it was held, that playing bowls was not within the 17 Geo. 2, c. 5, s. 2.]

10. Every person having in his or her custody or possession any picklock key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or out-building, or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument with intent to commit any felonious act; [See *R. v. Howarth, R. & M. C. C. 207, post, p. 1045.*]

11. Every person being found in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any inclosed yard, garden, or area, for any unlawful purpose; [And see 4 Geo. 4, c. 64, s. 7, *post, p. 1046.*]

12. Every suspected person or reputed thief, frequenting any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony;

13. And every person apprehended as an idle and disorderly person, and violently resisting any constable or other peace-officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended; [see another instance, sect. 15, *post, p. 1048.*]

How punished.

Shall be deemed a rogue and vagabond, within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months; and every such picklock key, crow, jack, bit, and other implement, and every such gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, and every such instrument as aforesaid, shall, by the conviction of the offender, become forfeited to the king's majesty.

31 & 32 Vict. c. 52.

By 31 & 32 Vict. c. 52, "The Vagrant Act Amendment Act, 1868," which, by sect. 2, is to be construed as one act with the 5 Geo. 4, c. 83, it is enacted that—

Extending provision of 5 Geo. 4, c. 83, to gaming with coin, &c.

Sect. 3. Every person playing or betting by way of wagering or gaming, in any street, road, highway, or other open and public place, or in any place to which the public have or are permitted to have access, at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument or means of such wagering or gaming, at any game or pretended game of chance, shall

be deemed a rogue and vagabond within the true intent and meaning of the 5 Geo. 4, c. 83, and as such may be convicted and punished under the provisions of that act.

The 1 & 2 Vict. c. 38, s. 2, reciting, that by the 5 Geo. 4, c. 83, it is enacted, that every person wilfully exposing to view in any street, road, highway, or public place any obscene print, picture, or other indecent exhibition shall, on summary conviction thereof, be liable to punishment as therein provided, and that doubts have arisen whether the exposing to public view in the windows of shops in streets, highways, or other public places of any obscene print, picture, or other indecent exhibition, is an offence within the meaning of the said recited act; enacts, That every person who shall expose or cause to be exposed to public view in the window or other part of any shop or other building situate in any street, road, highway, or public place any obscene print, picture, or other indecent exhibition, shall be deemed to have wilfully exposed such obscene print, picture, or other indecent exhibition to public view within the intent and meaning of the said act, and shall accordingly be liable to be proceeded against, and on conviction to be punished under the provisions of the said act.

And by sect. 6 of 7 & 8 Vict. c. 101 (*ante*, p. 1041), Every woman neglecting to maintain her bastard child (as therein specified) after having been once before convicted of such offence, and every woman deserting her bastard child, whereby such bastard child becomes chargeable to any parish or union, shall be punishable as a rogue and vagabond under the provisions of 5 Geo. 4, c. 83.

And sect. 53 provides that if any person received into an asylum (for houseless poor under that act), shall wilfully give a false name or make a false statement, or shall be proved to have given two or more different names on two or more different occasions when so received into any such asylum, such person not having lawfully changed her name in consequence of marriage, such person shall be deemed a rogue and vagabond within the meaning of 5 Geo. 4, c. 83.

The conviction and commitment as a rogue and vagabond under the above 10th division in 5 Geo. 4, c. 83, s. 4, of the head of vagrancy, must state that the implements, or some of them, were found on the prisoner at the time of his apprehension. (*R. v. Brown*, 8 T. R. 26.) Brown was committed upon the now repealed act, 23 Geo. 3, c. 88, for having *upon him* many picklock keys, two crows, and other implements, with an intent feloniously to break and enter into a dwelling-house at Wantey. Objection was taken to the commitment, that it did not state that he had those implements *upon him when he was apprehended*. Lord Kenyon, C. J., said, "I yield with great reluctance to the objection, but I am afraid it is well founded;" and the prisoner was discharged.

So, in *Reg. v. Cavanagh*, (1 Dowl. N. S. 546,) a commitment stating that the prisoner "did go about and endeavour to procure charitable contributions under a false pretence of being able to abstain from food for a period of five years and six months," was held bad, as not showing a sufficient act of vagrancy, and the prisoner was discharged on a *habeas corpus*, to which the above form of commitment was returned. (See "*Police*.")

A conviction stating that the offender being a person able wholly by work to maintain his family, did, on, &c., refuse and neglect so to do, whereby his wife, A. N., became chargeable, &c., was held sufficient. (*Nixon v. Nanney*, 10 Law J. N. S. 134, M. C.; 1 Ad. & E. N. S. 747.)

The conviction need not state that the offender was convicted before the magistrate, on the magistrate's own view, or by the confession of the offender, or by the evidence on oath of a credible witness, for the form prescribed, *post*, p. 1048, does not require it. (See *id.*)

## 2. Rogues and Vagabonds.

1 & 2 Vict. c. 38. Exposing obscene prints, &c., in shop windows, liable on conviction, to punishment.

Form of conviction and commitment.



## 2. Rogues and Vagabonds.

5 Geo. 4, c. 83, s. 4.

In *Re John Brown*, 18 L. T. R. 238, this section (12th division above) was held to apply to any reputed thief found frequenting *any highway* with intent to commit felony, so as to make him punishable as a rogue and vagabond; and that it is not restricted to highways leading to rivers or canals, or adjacent to places of public resort, and that the conviction need not allege that the defendant frequented the highway with intent to commit felony *there*.

## III. Incorrigible Rogues.

5 Geo. 4, c. 83.

Who shall be deemed incorrigible rogues.

By 5 Geo. 4, c. 83, s. 5,—1. Every person breaking or escaping out of any place of legal confinement before the expiration of the term for which he or she shall have been committed or ordered to be confined by virtue of this act;

2. Every person committing any offence against this act which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be, and duly convicted thereof;

3. And every person apprehended as a rogue and vagabond, and violently resisting any constable or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended;

How punished.

Shall be deemed an incorrigible rogue within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him, by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to remain until the next general or quarter sessions of the peace; and every such offender who shall be so committed to the house of correction shall be there kept to hard labour during the period of his or her imprisonment.

Sessions may detain and keep to hard labour, and punish by whipping, incorrigible rogues.

Sect. 10. When any *incorrigible rogue* shall have been committed to the house of correction, there to remain until the next general or quarter sessions, it shall be lawful for the justices of the peace, there assembled, to examine into the circumstances of the case, and to order, if they think fit, that such offender be further imprisoned in the house of correction, and be there kept to hard labour for any time not exceeding one year from the time of making such order, and to order further, if they think fit, that such offender (not being a female) be punished by whipping, at such time during his imprisonment, and at such place within their jurisdiction, as according to the nature of the offence, they in their discretion shall deem to be expedient.

It should be observed that justices in session have only an original jurisdiction over *incorrigible rogues*.

Whipping.

The form and manner of whipping may perhaps be best collected from the provisions of former vagrant acts. By the 22 Hen. 8, c. 12, the vagrant was to be "carried to some market-town, or other place, and there tied to the end of a cart, naked, and beaten with whips throughout such market-town, or other place, till his body should be bloody by reason of such whipping." By the 39 Eliz. c. 4, s. 3, he was to be "stripped naked from the middle upwards, and only whipped till his body should be bloody."

## IV. Search for and Apprehending Offenders, &amp;c.

By 5 Geo. 4, c. 83, s. 6, it shall be lawful for any person whatsoever to apprehend any person who shall be found offending against this act, and forthwith to take and convey him or her before some justice of the peace, to be dealt with in such manner as is hereinbefore directed, or to deliver him or her to any constable or other peace officer of the place where he or she shall have been apprehended, to be so taken and conveyed as aforesaid; and in case any constable or other peace officer shall refuse or wilfully neglect to take such offender into his custody, and to take and convey him or her before some justice of the peace, or shall not use his best endeavours to apprehend and to convey before some justice of the peace any person that he shall find offending against this act, it shall be deemed a neglect of duty in such constable or other peace officer, and he shall on conviction be punished in such manner as is hereafter directed.

A person may be arrested without warrant, under the above section, as a person found in a dwelling-house, &c., with intent to commit a felony, if he is seen in the dwelling-house, but gets out of it, and is taken on fresh pursuit. And it makes no difference that he was not seen getting out of a house, if he was found concealing himself to avoid being apprehended, upon other premises near. (*R. v. Howarth, R. & M. C. C. 207.*)

To make such arrest legal, it is not necessary that the person should have at the time he is arrested, a *continuing* purpose to commit the felony; he may be arrested though that purpose is wholly ended. (*Id.*)

In the same case it was held that where the circumstances are such that a man must know why a person is about to apprehend him, he need not be told, and the arrest will be legal, and the resistance illegal, as much as if he had been told. (*Id.* See further "*Arrest.*")

Sect. 7. It shall be lawful for any justice of the peace, upon oath being made before him that any person hath committed or is suspected to have committed any offence against this act, to issue his warrant to apprehend and bring before him or some other justice of the peace the person so charged to be dealt with as is directed by this act.

Sect. 8. It shall be lawful for any constable, peace officer, or other person apprehending any person charged with being an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, to take any horse, mule, ass, cart, car, caravan, or other vehicle, or goods in the possession or use of such person, and to take and convey the same as well as such person before some justice of the peace, and for every justice of the peace by whom any person shall be adjudged to be an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, to order that such offender shall be searched, and that his or her trunks, boxes, bundles, parcels, or packages, shall be inspected in the presence of the said justice, and of him or her, and also that any cart, car, caravan, or other vehicle which may have been found in his or her possession or use, shall be searched in his or her presence; and it shall be lawful for the said justice to order that any money which may be then found with or upon such offender, shall be paid and applied for and towards the expense of apprehending, conveying to the house of correction, and maintaining such offender during the time for which he or she shall have been committed; and if upon such search money sufficient for the purposes aforesaid be not found, it shall be lawful for such justice to order that a part, or, if necessary, the whole of such other effects then found shall be sold, and that the produce of such sale shall be paid and applied as aforesaid and also that the overplus of such money or

## 4. Apprehending Offenders, &amp;c.

5 Geo. 4, c. 83.  
Any person may apprehend offenders.

Constables, &c., neglecting their duty.

Justices may issue warrant to apprehend suspected persons.

Vagrants to be searched, and trunks, bundles, &c., to be inspected.

Money and effects found upon vagrants applied towards expense of apprehending and maintaining them.

#### 4. *Apprehending Offenders, &c.*

5 Geo. 4, c. 83.  
Lodging houses,  
&c., suspected to  
conceal vagrants,  
may be searched,  
and suspected  
persons brought  
before a justice.

effects, after deducting the charges of such sale, shall be returned to the said offender (a).

Sect. 13. It shall be lawful for any justice of the peace, upon information on oath before him made, that any person hereinbefore described to be an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, is or is reasonably suspected to be harboured or concealed in any house kept or purporting to be kept for the reception, lodging, or entertainment of travellers, by warrant under his hand and seal, to authorise any constable or other person or persons to enter at any time into such house, and to apprehend and bring before him or any other justice of the peace, every such idle and disorderly person, rogue, and vagabond, and incorrigible rogue, as shall be found therein, to be dealt with in the manner hereinbefore directed.

#### Mode of executing warrants.

A warrant under the vagrant act, to search all suspected houses for idle and disorderly persons, is strictly confined to persons of that description; and the officer will not be justified if he attempt to execute it in any other places than those intended by the statute. (1 *Leach*, 208.)

#### Commitment to be to house of correction, and not to common gaol.

By 4 Geo. 4, c. 64, s. 7, all idle and disorderly persons, rogues and vagabonds, incorrigible rogues, and other vagrants, are to be committed to houses of correction, and not to common gaols. (See "*Gaols.*")

#### Justice may bind persons by recognizance to prosecute vagrants at sessions.

By 5 Geo. 4, c. 83, s. 9, When any justice as aforesaid shall commit any such incorrigible rogue to the house of correction, there to remain till the next general or quarter sessions, or when any such idle and disorderly person, rogue and vagabond, or incorrigible rogue, shall give notice of his or her intention to appeal against the conviction of him or her, and shall enter into recognizance as hereinafter directed to prosecute such appeal, such justice shall require the person by whom such offender shall be apprehended, and the person or persons whose evidence shall appear to him to be material to prove the offence and to support such conviction, to become bound in recognizance (See Form, No. 7, *post*), to his Majesty, his heirs and successors, to appear at the said general or quarter sessions, to give evidence against such offender touching such offence; and the justices of the peace at their said general or quarter sessions are hereby authorised and empowered, at the request of any person who shall have become bound in any such recognizance, to order the treasurer of the county, riding, division, or place in which the offence shall have been committed, to pay unto such prosecutor, and unto the witness or witnesses on his or her behalf, such sum or sums of money as to the court shall seem reasonable and sufficient to reimburse such prosecutor and such witness or witnesses respectively for the expenses he, she, or they shall have been severally put to, and for his, her, or their trouble and loss of time in and about such prosecution; which order the clerk of the peace is hereby directed and required forthwith to make out and deliver unto such prosecutor, or unto such witness or witnesses, upon being paid for the same, the sum of 2s. and no more; and the said treasurer is hereby authorised and required, upon sight

#### Sessions may order payment of expenses to prosecutors and witnesses.

#### Clerk of the peace to make out and deliver order.

(a) See the 4 Geo. 4, c. 64, s. 39, and 5 Geo. 4, c. 85, s. 22, as to the expenses of carrying vagrants to gaol, where they have no effects. (See "*Gaols.*")

of such order, forthwith to pay unto such prosecutor, or other person or persons authorised to receive the same, such money as aforesaid, and the said treasurer shall be allowed the same in his account; and in case any such person or persons as aforesaid shall refuse to enter into such recognizance, it shall be lawful for such justice to commit such person or persons so refusing to the common gaol, there to remain until he, she, or they shall enter into such recognizance, or shall be otherwise discharged by due course of law.

5. *Recognizances to prosecute, &c.*

5 Geo. 4, c. 83.

See further as to expenses of prosecutions in general, title "*Costs.*"

## VI. Constables neglecting Duty—Obstructing them— Their Expenses.

By 5 Geo. 4, c. 83, s. 11, In case any constable, or other peace officer shall neglect his duty in any thing required of him by this act, or in case any person shall disturb or hinder any constable, or other peace officer, in the execution of this act, or shall be aiding, abetting, or assisting therein, and shall be thereof convicted upon the oath of one or more credible witness or witnesses, before one or more justice or justices of the peace, where such offence shall be committed, every such offender shall, for every such offence, forfeit any sum not exceeding 5*l.*; and in case such offender shall not forthwith pay such sum so forfeited, the same shall be levied by distress and sale of the offender's goods, by warrant from such justice or justices; and if sufficient distress cannot be found, it shall be lawful to and for one or more such justice or justices to commit the person so offending to the house of correction, there to be kept for any time not exceeding three calendar months, or until such fine be paid; and the said justice or justices shall cause the said fine, when paid, to be forthwith delivered to the treasurer of the county, riding, division, or place where such offence shall have been committed, to be by him added to and used as part of the stock of the said county, riding, division, or place.

Officers neglecting their duties, &c.

Obstructing them.

Penalty.

Distress.

Commitment.

Sect. 12. In case any constable, or other peace officer, shall be convicted before any one or more justice or justices of the peace, for any neglect of any duty required of him by this act, or of any disobedience of any lawful warrant or order of any justice or justices of the peace issued under the provisions of this act, and in case any two or more justices of the peace shall impose any fine, or direct any penalty to be paid by such officer, under and by virtue of the powers given to justices of the peace by 33 Geo. 3, intituled "An Act to authorise Justices of the Peace to impose Fines upon Constables, Overseers, and other Peace or Parish Officers, for Neglect of Duty, and on Masters of Apprentices for Ill-usage of such their Apprentices, and also to make Provision for the Execution of Warrants of Distress granted by Magistrates," or under any other powers enabling such justices in that behalf, then and in every such case it shall be lawful for such justice or justices, upon conviction of any such offender, to reimburse and allow to the person or persons on whose complaint or information such offender shall have been convicted, all necessary costs and expenses which such person or persons may thereby have incurred, or by any appeal made in consequence thereof, by making an order under his or their hands and seals, upon the treasurer of the county, riding, division, or place, to pay to such person or persons the amount of such costs and expenses, on producing the said order, and giving a receipt

On conviction of officers, &c., justices to make order for payment of expenses of prosecution as under.

6. *Constables neglecting Duty, &c.* for the same, and the same shall be allowed the said treasurer in his account.

See further as to the general duties of constables, title "*Constable.*"

5 Geo. 4, c. 83.

## VII. Certificates to ask Alms.

Visiting justices of gaols, &c., may grant certificates to persons discharged to receive alms in their route.

Such persons loitering, &c., deemed rogues.

No certificates except to those entitled under 43 Geo. 3, c. 61.

Other persons asking alms deemed idle, &c.

By 5 Geo. 4, c. 83, s. 15, Nothing therein contained shall extend or be construed to extend, so as to restrain, hinder, or prevent any visiting justice of any county gaol, house of correction, or other prison, from granting a certificate or other instrument for enabling any person discharged from a county gaol, house of correction, or other prison, to have or receive alms or relief, in or upon his or her route to his or her place of settlement; provided that such certificate be made and drawn up in compliance with the directions and provisions of any act or acts of parliament for the better regulation and management of gaols, houses of correction, or other prisons; and if any person to whom any such certificate or instrument shall be delivered, shall act in any manner contrary to the directions or provisions of such certificate or instrument, or shall loiter upon his or her route, or shall deviate therefrom, every such person shall be, and be deemed to be, a rogue and vagabond within the provisions and directions of this act, and shall be punished accordingly.

Sect. 16. No justice of the peace, mayor, or other magistrate, shall grant to any person, other than a person entitled thereto, under and by virtue of 43 Geo. 3, intituled "An Act for the Relief of Soldiers, Sailors, and Marines, and of the Wives of Soldiers in the Cases therein mentioned, so far as relates to England," any certificate or other instrument enabling such person to ask alms or relief in their route to any place, or for any other purpose whatever; and every person asking alms or relief under and by virtue of any certificate or other instrument hereby prohibited, is liable to be declared to be an idle and disorderly person in like manner as if he or she had possessed no such certificate or other instrument as aforesaid.

## VIII. Form, &c., of Conviction.

Form of conviction.

By 5 Geo. 4, c. 83, s. 17, "No proceeding to be had before any justice or justices of the peace under the provisions of this act shall be quashed for want of form; and every conviction of any offender as an idle and disorderly person, or as a rogue and vagabond, or as an incorrigible rogue, under this act, shall be in the form or to the effect following, or as near thereto as circumstances will permit; (that is to say,)

— } *Be it remembered, that on the* day of in the  
to wit. } year of our Lord, at in the county of, A. B.  
is convicted before me, C. D., one of his Majesty's justices of the peace in and  
for the said county, of being an idle and disorderly person [or "a rogue and  
vagabond," or "an incorrigible rogue"], within the intent and meaning of the  
statute made in the fifth year of the reign of his Majesty king George the Fourth,  
intituled An Act [here insert the title of this act, ante]; that is to say, for that  
the said A. B., on the day of, at, in the said county

[here state the offence proved before the magistrate], and for which said offence the said A. B. is ordered to be committed to the house of correction at \_\_\_\_\_, there to be kept to hard labour for the space of \_\_\_\_\_ [or, "until the next general or quarter sessions"]. Given under my hand and seal, the day, year, and at the place first above written.

8. Form, &c., of Conviction.  
5 Geo. 4, c. 83.

And the justice or justices of the peace before whom any such conviction shall take place, shall, and he and they is and are hereby required to transmit the said conviction to the next general or quarter sessions of the peace to be holden in and for the county, riding, division, or place wherein such conviction shall have taken place, there to be filed and kept on record; and a copy of the conviction so filed, duly certified by the clerk of the peace shall and may be read as evidence in any court of record, or before any justice or justices of the peace acting under the powers and provisions of this act."

Conviction to be transmitted to the sessions, and a copy thereof to be evidence.

See the decisions and observations as to the form of conviction, ante. Decisions as to.

A misrecital of the title of the act, if not of a substantial kind, will not invalidate the conviction. (*Nixon v. Nanney*, 10 *Law J.*, N. S. 134, *Mag. Cas.* 1 A. & E. N. S. 747.)

## IX. Appeal.

By 5 Geo. 4, c. 83, s. 14, "Any person aggrieved by any act or determination of any justice or justices of the peace out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter sessions for the county, riding, division, or place in and for which such justice or justices shall have so acted, giving to the justice or justices of the peace, whose act or determination shall be appealed against, notice in writing of such appeal, and of the ground thereof, within seven days after such act or determination, and before the next general or quarter sessions, and entering within such seven days into a recognizance, with sufficient surety, before a justice of the peace for the county or place in which such person shall have been convicted, personally to appear and prosecute such appeal; and upon such notice being given, and such recognizance being entered into, such justice is hereby empowered to discharge such person out of custody; and the court at such general or quarter sessions shall hear and determine the matter of such appeal, and shall make such order therein as shall to the said court seem meet, and in case of the dismissal of the appeal, or the affirmance of the conviction, shall issue the necessary process for the apprehension and punishment of the offender, according to the conviction."

Appeal to sessions.  
Notice.  
Recognizance.  
Sessions may determine.

By 1 & 2 Vict. c. 38, "An Act to amend an Act for punishing idle and disorderly Persons and Rogues and Vagabonds," reciting that "it is expedient to alter and amend 5 Geo. 4, intitled 'An Act for the Punishment of idle and disorderly Persons and Rogues and Vagabonds in that Part of Great Britain called England;'" it is enacted, "That when any person aggrieved by any act or determination of any justice or justices of the peace out of sessions, in or concerning the execution of the said act, shall have appealed against such act or determination according to the provisions of the said act, and shall thereupon have been discharged out of custody, and such person shall not personally appear and prosecute such appeal at the general or quarter sessions according to the recognizance entered into on such appeal, it shall be lawful for the justices assembled at such general or quarter sessions, or for any justice of the peace for the county or place in which such

& 2 Vict. c. 23.  
Persons convicted, being discharged out of custody having appealed against conviction, and not appearing to prosecute such appeal, may be re-committed.

9. *Appeal.*

5 Geo. 4, c. 83.

person shall have been convicted, on proof of the said conviction, and on proof by certificate under the hand of the clerk of the peace for the said county or place, or of the person acting as his deputy, that the person so convicted did not personally appear to prosecute such appeal, to issue a warrant for the apprehension and committal of such person for such period of time as, together with the days during which such person so convicted shall have been imprisoned (if any) previous to being discharged by reason of appeal, shall complete the full term for which such person was adjudged to be imprisoned at the time of his or her said conviction."

Decisions as to.

As to appeals in general, see "*Appeal*."

A notice of appeal against a conviction under the 5 Geo. 4, c. 83, s. 4, of a party as a rogue and vagabond, for obscenely exposing his person in a place of public resort, with intent to insult a female, stating as the ground of such appeal that the appellant was not guilty of the said offence, is sufficient. (*R. v. Justices of Newcastle upon Tyne*, 1 B. & Ad. 933.)

Under the 14th section, a subsequent court of quarter sessions have power to give effect to a judgment pronounced at a previous sessions of the same court, by issuing process of execution upon a conviction as awarded at such previous sessions. And a *mandamus* to the court of quarter sessions will go, commanding them to issue such process of execution where there has been no delay in making the application, or the delay has been satisfactorily accounted for. (*R. v. Justices of Warwickshire*, 1 Harr. & W. 18.)

## X. Limitation, &amp;c., of Actions—Treble Costs, &amp;c.

Justices, &c., to have treble costs, if judgment be in their favour.

By 5 Geo. 4, c. 83, s. 18, In all cases where an action shall be brought against any justice of the peace, constable, or other person, for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this act, such justice, constable, or other person, if he shall have judgment in his favour, shall have treble costs awarded to him by the court, unless the judge shall certify that there was a reasonable cause for such action. [But now by the 5 & 6 Vict. c. 97, ss. 1 & 2, the defendant shall in such cases have only his reasonable costs.]

Limitation of actions.

Sect. 19. "Every such action shall be commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards; and if any person or persons shall be sued for any matter or thing which he, she, or they shall have done in the execution of this act, he, she, or they may plead the general issue, and give the special matter in evidence."

General issue.

As to clauses of this nature in general, see "*Justices*," "*Constable*."

## XI. Removal of a convicted Vagrant, &amp;c., to his Settlement.

Persons convicted chargeable to parish in which they reside.

By 5 Geo. 4, c. 83, s. 20, Every person who under the provisions of this act shall have been convicted as an idle and disorderly person, or as a rogue and vagabond, shall be deemed to be actually chargeable to the parish, township, or place in which such person shall

reside; and such person shall be liable to be removed to the parish of his or her last legal settlement, by the order of two justices of the peace of the division or place in which such person shall reside.

11. *Removal of convicted Vagrant, &c.*

5 Geo. 4, c. 83.

## XII. General Saving and Exemptions—Soldiers, &c.

By 5 Geo. 4, c. 83, s. 21, Wherever, by any act or acts of parliament now in force it is directed that any person shall be punished as an idle and disorderly person, or as a rogue and vagabond, or as an incorrigible rogue, for any offence specified in such act or acts, and not hereinbefore provided for by this act, in every such case, whether such person shall or shall not have committed any offence against this act, every such person shall be punished under the provisions, powers, and directions of this act.

Offenders under former acts to be punished under this act.

By the 43 Geo. 3, c. 61, soldiers, sailors, mariners, and the wives of soldiers, therein mentioned, are relieved against the penalties of the vagrant acts. (See its provisions, and those of the Annual Mutiny Act, "*Military Law.*")

Soldiers, &c.

## XIII. Forms.

——— } Be it remembered, that, on &c., at &c., A. B., of \_\_\_\_\_, in the said (1.) Information  
to wit. } county, [constable], cometh before me, J. P., one of her Majesty's jus- against a vagrant.  
tices of the peace for the said county, and on his oath informeth me, that C. D.,  
on the \_\_\_\_\_ day of \_\_\_\_\_, at the parish of \_\_\_\_\_, in the county  
aforesaid [here state the act of vagrancy within the meaning of the 5 Geo. 4,  
c. 83, ss. 3, 4, 5, ante, pp. 1040, 41, 44, as thus:] being then and there able  
wholly to maintain himself and his family by work and by other means, did  
wilfully refuse and neglect so to do; by which refusal and neglect the wife of  
the said C. D. and his [two] children did then and there become chargeable, and  
are now chargeable to the parish of \_\_\_\_\_, in the said county [or, as the  
case may be]; contrary to the form of the statute in that case made and pro-  
vided.

A. B.

Taken and sworn before me, this \_\_\_\_\_ day }  
of \_\_\_\_\_, 186 . }

——— } To the constable of the parish of \_\_\_\_\_, and to all constables and (2.) Warrant to  
to wit. } others her Majesty's officers of the peace for the said county of \_\_\_\_\_, apprehend there-  
and others whom this may concern. on.

Forasmuch as A. B., of, &c., hath this day made complaint and information upon oath before me, J. P., esq., one of her Majesty's justices of the peace in and for the said county, that C. D., of the same parish, [labourer], being a person able to work, and thereby, &c., [here state the offence as it is stated in the information]; these are therefore to command you, in her said Majesty's name, forthwith to apprehend and bring before me the body of the said C. D., to answer unto the said complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.



## 13. Forms.

(3.) Examination  
of a vagrant on  
5 Geo. 4, c. 83,  
s. 4.

to wit. } *The examination of C. D., a rogue and vagabond, taken [on oath]  
before me, one of her majesty's justices of the peace in and for  
the said county, the day of , in the year of our Lord one  
thousand eight hundred and .*

*Who on his oath saith, that he was born at [and so trace out the  
history of his life so far forth as to ascertain his last legal place of settle-  
ment.]*

Conviction  
thereon.

[The 17th section of the act gives the form of a conviction, *ante*, p. 1048.]

(4.) Commitment  
of an idle and dis-  
orderly person.

to wit. } *To the constable of , in the said county, and to the keeper of  
the house of correction at , in the said county, and others whom  
this may concern.*

*Whereas C. D. was this day duly convicted before me, one of the  
justices of our lady the Queen, assigned to keep the peace of our said lady the  
Queen in and for the said county of , and also to hear and determine  
divers felonies, trespasses, and other misdemeanors, in the said county com-  
mitted, of being an idle and disorderly person, for that he, on the day of  
, in the year of our Lord , at , in the parish of  
in the said county, did [stating act of vagrancy], contrary to the form of the  
statute in such case made and provided; and was by me adjudged to be com-  
mitted for the said offence to the house of correction, there to be kept to hard  
labour for [not exceeding one calendar month], according to the form of the said  
statute. These are therefore to command you, the said constable, to convey the  
same C. D. to the said house of correction, and him to deliver to the keeper  
thereof, together with this warrant. And I do hereby command you, the said  
keeper, to receive the said C. D. into your custody, in the said house of correction,  
and him there safely keep to hard labour for . And for so doing this  
shall be your sufficient warrant. Given under my hand and seal, at, &c., this  
day of, &c.*

(5.) Commitment  
of a rogue and  
vagabond.

to wit. } *To the constable of in the said county, and to the keeper of the  
house of correction at , in the said county.*

*Whereas C. D. was this day duly convicted before me, J. P., esq., one of the  
justices of our lady the Queen, assigned to keep the peace of our said lady the  
Queen in and for the said county of , as a rogue and vagabond [or, "of  
being an idle and disorderly person"], for that he, the said C. D., on the  
day of , in the year of our Lord one thousand eight hundred and  
, at , in the parish of , in the said county, did  
[state the act of vagrancy of which the offender is convicted], contrary to the  
form of the statute in such case made and provided; and was by me adjudged  
to be committed for the said offence to the house of correction, there to be kept to  
hard labour for the space of (a). These are therefore to command  
you, the said constable, to convey the said C. D. to the said house of correction,  
and him to deliver to the keeper thereof, together with this warrant. And I do  
hereby command you, the said keeper, to receive the said C. D. into your  
custody in the said house of correction, and him there safely keep to hard labour  
for the space of . And for so doing this shall be your sufficient warrant.  
Given under my hand and seal, at, &c., this day of, &c.*

(6.) Commitment  
of an incorrigible  
rogue

*Same as the forms, ante, (Nos. 4, 5), mutatis mutandis, stating the commit-  
ment to be until the next general [or "quarter"] sessions of the peace, to be  
holden at , in and for the county of , to be then and there further  
dealt with according to law. And have you him then there, together with this  
precept. And for so doing, &c.*

(a) If an "idle and disorderly person," not exceeding one calendar month;  
if a "rogue and vagabond," not exceeding three calendar months.

\_\_\_\_\_ } Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_  
 year of the reign of &c., C. D., of \_\_\_\_\_, in the said  
 county of \_\_\_\_\_, personally came before me, J. P., esq., one of the justices of  
 our said lady the Queen, assigned to keep the peace in and for the said county,  
 and acknowledged himself to owe to our said lady the Queen the sum of \_\_\_\_\_  
 pounds of good and lawful money of Great Britain, to be made and levied of his  
 goods and chattels, lands and tenements, to the use of our said lady the Queen,  
 her heirs and successors, if he, the said C. D., shall fail in the condition under-  
 written:

13. Forms.  
 (7.) Recognizance  
 to prosecute a  
 vagrant at the  
 sessions.

The condition of this recognizance is such, that, if the above-bound C. D.  
 shall personally appear at the next general [or "quarter"] sessions of the peace  
 to be holden at \_\_\_\_\_, in and for the said county, and then and there prosecute and  
 give evidence against C. D., for [stating the act of vagrancy of which the  
 offender is convicted], and shall not depart the court without leave thereof,  
 then the above-written recognizance to be void, or else to remain in its full  
 force. Taken and acknowledged, the day and year first above written,  
 before me,

J. P.

## Vestries.

[58 Geo. 3, c. 69; 59 Geo. 3, c. 85; 1 & 2 Will. 4, c. 60; 1 Vict. c. 45; 13  
 & 14 Vict. c. 57; 14 & 15 Vict. c. 97.]

### HEREIN—

I. Of Vestries not being Select Vestries, or Vestries held under 1 & 2  
 Will. 4, c. 60; and herein of the Vestry Clerk, and liability of  
 Vestrymen, p. 1053.

II. Of Select Vestries, p. 1068.

III. Of Vestries under the 1 & 2 Will. 4, c. 60, p. 1071.

### I. Vestries not being Select Vestries, or Vestries held under 1 & 2 Will. 4, c. 60; and herein of the Vestry Clerk, and liability of Vestrymen.

*What and where held.*]—A vestry, properly speaking, is the assembly  
 of the whole parish, met together in some convenient place for the  
 despatch of the affairs and business of the parish; and this meeting  
 being commonly held in the vestry adjoining to or belonging to the  
 church, it thence takes the name of vestry, as the place itself doth  
 from the priest's vestments, which are usually deposited and kept  
 there. (*Shaw's Par. L. c. 17.*)

What a vestry  
 meeting, and  
 where held.

It may be held in the church itself, (*Wilson v. M'Math*, 3 B. & Al.  
 241,) or, it would seem, anywhere within its precincts, but not out of  
 them. (*R. v. Justices of Surrey*, 4 Jurist, 1056.) It has been held,  
 however, that a town hall is not an improper place to take a poll, by  
 reason of its being private property, where no person had been pre-  
 vented from voting on that account. (*Baker v. Wood*, 1 Curteis, 527;  
*see post*, 13 & 14 Vict. c. 57.)

By custom a select number of persons may have this right of Select vestry.  
 despatching the affairs and business of the parish, and the assembly  
 of them for that purpose is what is termed a select vestry; and for the

1. *Parish Vestries in General.* law relative to such a vestry, *see post*, p. 1068. Whenever such vestry exists, the right of the common-law vestry has always in practice been considered as superseded. (*Clarke v. King*, 2 Y. & J. 525.)

When held, and how convened.

*When held and how convened.*—These meetings are usually assembled according as the exigencies of the parish require; and though it was formerly considered fit and proper, if anything peculiar was to be done, that notice should be given of the specific purpose for which a vestry was called, it was also held not to be absolutely necessary to give such notice. (*Clutton v. Cherry*, 2 Phil. Ec. Ca. 384; *Steer's P. L.* 251.)

Three days' notice to be given of vestries.

But now, by 58 Geo. 3, c. 69, s. 1, (commonly called Sturges Bourne's Act,) intituled "An Act for the Regulation of Parish Vestries," reciting that "It is expedient to regulate the manner of holding parish vestries, and the right of voting therein," it is enacted, "That from and after the first day of July, 1818, no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry and of the place and hour of holding the same, and the *special purpose thereof*, three days at the least before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some Sunday during or immediately after divine service, and by affixing the same, fairly written or printed, on the principal door of such church or chapel."

Notice, how to be given.

Stat. 1 Vict. c. 45, repeals in part this sect., and also part of sect. 7, *post*, p. 1057, and enacts by sect. 2, that all such "proclamations or notices as have heretofore been made or given in the church or chapel of any parish or place, or at the door of any church or chapel, be affixed on or near to the doors of all the churches and chapels within such parish or place;" and by sect. 3, such notice must, *previously* to its being affixed, have been signed by a churchwarden of the church or chapel, or by the rector, vicar, or curate of such parish, or by an overseer of the poor of such parish, and must be affixed on or near to the principal door of such church or chapel.

Form of notice.

A notice that a vestry meeting will be held "to receive the report of the Church Committee, and to adopt such measures as may be necessary to carry such report into execution," is a sufficient notice of the special purpose of the meeting, within the above enactment, so as to authorise the said meeting to borrow money on the credit of the rates, under the provisions of the 58 Geo. 3, c. 45. (*Blunt v. Harwood*, 3 Nev. & Per. 577; 8 A. & E. 610.) It is a question whether the notice would have been sufficient if the latter part of it "and to adopt such measures, &c." had been omitted:—*Semble, per Patteson, J.*, that it would: *per Lord Denman, C. J.*, and *Littledale, J.*, that it would not. (*Id.*)

In *Warner v. Gater*, (2 Curteis, 218,) it was held that a notice "for making a church-rate and other purposes," was sufficient to justify a rate for the consecration of a church under the Church Building Acts.

Ringings church bell.

It is usual, for half an hour before the meeting begins, for one of the church bells to be tolled, to give the parishioners notice of their assembling together. (*Shaw, Par. L. c. 17.*)

By whom convened.

*By whom convened.*—Vestries for church matters regularly are to be called by "the churchwardens, with the consent of the minister." The above act of parliament neither altered the general authority under which, nor the persons by whom, vestries are to be called; it only adds some further formalities in the mode of calling, or rather, makes the preliminary announcements essential, which were before

considered expedient by the spiritual and ecclesiastical courts. It therefore follows that a private parishioner has no right given him by the act, and he had none before, during the time of divine service and of his own authority, to publish a notice for a vestry to choose new churchwardens, or any other notice in the church. (*Dawe v. Williams*, 2 *Addams' Rep.* 138; *Steer's P. L.* 252.)

It seems that the minister is the proper person to give notice of holding a vestry for the election of churchwardens and parish officers. (*Reg. v. Justices of Surrey*, 4 *Jurist*, 1056.)

# 1. Parish Vestries in General.

*Who may attend at.*—Anciently, at the common law, every parishioner who paid to the church-rates, or scot and lot, and no other person, had a right to come to these meetings. But this must not be misunderstood of the minister, who hath a special duty incumbent on him in this matter, and must be responsible to the bishop for his care herein; and therefore in every parish meeting he *presides* for the regulating and directing this affair; and this equally holds whether he be rector or vicar. (*Shaw's Par. L. c.* 17; *Steer's P. L.* 253.)

Who may attend at.

The commissioners for building and enlarging churches having, pursuant to the 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134, s. 30, appointed twenty-six persons to be a select vestry for the care and management of a church and all matters relating thereto; it was held, that in order to constitute a good assembly of the select vestry so appointed, there must be present a majority of the number (*viz.*, fourteen) named in the appointment; and therefore that a rate for the repair of the church, made at a meeting where there was not such a majority, was illegal, and that payment of such a rate could not be enforced in the ecclesiastical court. (*Blackett v. Blizard*, 9 *B. & C.* 851.)

What a sufficient vestry meeting.

Where any parish or place shall be divided into separate parishes for ecclesiastical purposes, or into separate districts or chapelries in which select vestries shall be appointed by the commissioners, all members of the select vestry of the original parish who shall reside in the district or division of the original church or chapel, shall continue to act as the vestry of such district or division in all matters relating to such church or chapel, and the repairs thereof, or to any other ecclesiastical matters or things, or in the distribution of any proportion of any bequest, gifts, or charities which may under this act be assigned to any such district or division: provided that no member of any select vestry shall, after such division, act in any manner relating to any church or chapel, or any other ecclesiastical matters or things, except such as relate to the division in which he shall reside; and if by reason of such division a sufficient number of such members of select vestry shall not remain resident in the division within which the original church or chapel shall be situate, according to the proportion fixed by the commissioners (regard being had to the population of such division, and its relative population to that of the whole parish or place), all such deficiencies shall be filled up as vacancies have before been filled up therein: provided that no person shall vote in supplying such deficiencies unless resident within the division for which the members are to be chosen; provided that the persons chosen shall not thereby be members of the vestry for any other purposes than such as relate to the division for which they shall be chosen, or for the distribution of any charitable gifts therein; provided that all the members of the select vestry of any such parish or place resident in any other divisions thereof shall be members of such vestries as shall be appointed under the acts for the divisions in which they shall reside. (3 Geo. 4, c. 72, s. 10.)

In cases of division of parish, vestrymen resident in district left to original parish church to continue to act for ecclesiastical purposes.

Vestrymen to act only in division of their residence.

How deficiency of vestrymen to be supplied.

*Chairman.*—If the minister of the parish be present, he has a Chairman right to preside at the meeting; (*Wilson v. M'Math*, 3 *B. & Al.* 261, Minister.

1. *Parish Vestries in General.* *et notis; Baker v. Wood*, 1 *Curteis*, 522; 3 *Phil. Ec. Ca.* 87; *R. v. D'Oyley*, 4 *P. & D.* 52, and 2 *A. & E.* 139; ) though he is not an essential part of the vestry. (*Marley v. Barbet*, 2 *Esp.* 687.) As to the power of the chairman at the meeting, see *post*, p. 1060.

58 Geo. 3, c. 69.

By 58 Geo. 3, c. 69, s. 2, in case the rector or curate shall not be present, the persons assembled may elect a chairman, who shall have a casting vote.

Chairman of vestries appointed; to have casting vote.

The following is that enactment. "In case the rector or vicar or perpetual curate shall not be present, the persons so assembled in pursuance of such notice shall forthwith nominate and appoint by plurality of votes, to be ascertained as hereinafter is directed, one of the inhabitants of such parish to be chairman of and preside in every such vestry; and in all cases of equality of votes upon any question arising therein, the chairman shall (in addition to such vote or votes as he may by virtue of this act be entitled to give in right of his assessment) have the casting vote; and minutes of the proceedings and resolutions of every vestry shall be fairly and distinctly entered in a book, (to be provided for that purpose by the churchwardens and overseers of the poor,) and shall be signed by the chairman, and by such other of the inhabitants present as shall think proper to sign the same."

Minutes to be entered and signed.

Voting at, qualification for.

*Voting at, and Qualification for.*—Residence within the parish is not a necessary qualification, as all out-dwellers occupying land in the parish have a vote in the vestry as well as the inhabitants. (*Johns*, 19; *Steer's P. L.* 253. See sect. 1, 59 Geo. 3, c. 85, *post*, 1058.)

Non-payment of church-rates.

The non-payment of church-rates does not disqualify a parishioner from voting, nor can a by-law or resolution of a parish vestry "that such as have not paid church-rates shall not vote" be supported. (*Faulkner v. Elger*, 4 *B. & C.* 449; 6 *D. & R.* 517.)

31 & 32 Vict. c. 109.

By "The Compulsory Church Rate Abolition Act, 1868," "church rate" shall mean any rate for "ecclesiastical purposes," and "ecclesiastical purposes" shall mean the building, re-building, enlargement, and repair of any church or chapel, and any purpose to which by common or ecclesiastical law a church rate is applicable, or any of such purposes; and enacts, by sect 6—

Inhabitants of Ecclesiastical district, not to vote in parishes, out of which the district is formed as to church rates.

That whensoever any ecclesiastical district, having within its limits a consecrated church in use for the purposes of divine worship, shall have been legally constituted out of any parish or parishes, and whether such district shall or shall not be a separate and distinct parish, the inhabitants of such district shall not be entitled to vote for or in reference to a church rate, or the expenditure thereof, at any vestry meeting of the parish or parishes out of which the said district is formed, nor shall they be assessed to any rate made in relation to the parish church of the said parish or parishes, but such inhabitants may assemble in vestry, and, subject to the provisions of this act, may make and assess a rate in relation to the church of their own district, in like manner as if such church were the church of an ancient parish: provided that nothing in this act contained shall affect any right of burial to which the inhabitants of the district may be entitled in the churchyard of the mother church.

Regulation as to persons refusing to pay church rates.

And by sect. 8, that no person who makes default in paying the amount of a church rate for which he is rated, shall be entitled to inquire into, or object to, or vote in respect of the expenditure of the monies arising from such church rate; and if the occupier of any premises shall make default for one month after demand in payment of any church rate for which he is rated, the owner shall be entitled to pay the same, and shall thereupon be entitled, until the next succeeding church rate is made, to stand for all purposes relating to church rates (including the attending at

vestries and voting thereat) in the place in which such occupier would have stood.

*1. Parish Vestries in General.*

By 58 Geo. 3, c. 69, s. 3, Every inhabitant present, who shall, by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon or in respect of any annual rent, profit or value, not amounting to 50%, shall have and be entitled to give one vote and no more; and every inhabitant there present, who shall in such last rate have been assessed or charged upon or in respect of any annual rent or rents, profit or value, amounting to 50% or upwards, (whether in one or in more than one sum or charge), shall have and be entitled to give one vote for every 25% of annual rent, profit and value, upon or in respect of which he shall have been assessed or charged in such last rate, so nevertheless that no inhabitant shall be entitled to give more than six votes; and in cases where two or more of the inhabitants present shall be jointly rated, each of them shall be entitled to vote according to the proportion and amount which shall be borne by him of the joint charge; and where one only of the persons jointly rated shall attend, he shall be entitled to vote according to and in respect of the whole of the joint charge. (See sect. 1, 59 Geo. 3, c. 85, *post*.)

58 Geo. 3, c. 69.  
Manner of voting in vestries (a).

Sect. 4. When any person shall have become an inhabitant of any parish, or become liable to be rated therein, since the making of the last rate for the relief of the poor thereof, he shall be entitled to vote for and in respect of the lands, tenements, and property for which he shall have become liable to be rated, and shall consent to be rated in like manner as if he should have been actually rated for the same.

Inhabitants coming into a parish since the last rate may vote.

Sect. 5. No person who shall have refused or neglected to pay any rate for the relief of the poor, which shall be due from and shall have been demanded of him, [and] shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same. (The word "and" was inserted in this enactment by mistake; see it explained by the 59 Geo. 3, c. 85, s. 3, *post*.)

Inhabitants refusing payment of poor's rate excluded from vestries.

Sect. 7. That all provisions, authorities, and directions in this act contained in relation to parishes, shall extend, and be construed to extend, to all townships, vills, and places having separate overseers of the poor and maintaining their poor separately, and that all the directions and regulations herein contained in regard to vestries shall extend and be applied to all meetings which may by law be holden of the inhabitants of any parish, township, vill or place, for any of the purposes in this act expressed; and that the notices by this act required to be given of every vestry may, in places in which there is or shall be no parish church or chapel, or where there shall not be divine service in such church or chapel, be given and published in such manner as notices of the like nature shall have been there usually given and published, or as shall be most effectual for communicating the same to the inhabitants of every such parish, township, vill, or place respectively.

Provisions in relation to parishes extend to townships, &c.

Manner of giving notices of vestries and meetings in special cases.

The latter part of this enactment is altered by the 1 Vict. c. 45, *ante*, p. 1054.

Sect. 8. Nothing in this act contained shall extend or be con-

(a) Under this section the rated owner of small tenements, by 13 & 14 Vict. c. 99, who is to have "the same right to vote in vestry as if he were an occupier duly rated in respect of

the same tenement, is limited to six votes, though he be rated in respect of more than six small tenements. (*Richardson v. Gladwin and others*, 27 Law J. M. C. 192.)

1. *Parish Vestries in General.*

58 Geo. 3. c. 69.  
Time for holding vestries specially directed not altered.  
Proviso for special vestries.

strued to extend to alter the time of holding any vestry, parish or town meeting, which is by the authority of any act required to be holden on any certain day, or within any certain time in such act prescribed and directed; nor shall anything in this act contained extend to take away, lessen, prejudice, or affect the powers of any vestry or meeting holden in any parish, township or place, by virtue of any special act or acts of any ancient and special usage or custom, or to change or affect the right or manner of voting in any vestry or meeting so holden.

In *Campbell v. Maund*, 1 Nev. & P. 558, it was held that the local parochial act of Paddington, 5 Geo. 4. c. 126, did not exempt it from this act.

What case not within proviso of s. 8 of 58 Geo. 3, c. 69.

A local act passed before the statute 58 Geo. 3, c. 69, for the regulation of parish vestries, created the office of guardians of the poor for a particular parish, and enacted, that vacancies should be annually filled up by the rated inhabitants assembled in the vestry room, who should elect persons in the room of those going out. Held, after the passing of statute 58 Geo. 3, c. 69, the inhabitants must be allowed in such election the number of votes in proportion to their respective assessments, defined in the latter act; for that the local act did not give this vestry such a peculiar constitution as to bring it within sect. 8 of the 58 Geo. 3, c. 69, which preserves to vestries *holden under any special act* the powers and rights of voting which they previously enjoyed. (*R. v. Churchwardens of St. James's Clerkenwell*, 1 A. & E. 317; 3 N. & M. 411.)

And for London and Southwark.

Sects. 9 and 10 provide that nothing in the act contained shall extend to any parish within the city of London or borough of Southwark.

Public act.

By sect. 12 the act is to extend only to England and Wales, and be a public act.

59 Geo. 3, c. 85.  
Persons rated to the poor, though not parishioners, may vote in vestry according to value of premises rated.

By 59 Geo. 3, c. 85, "An Act to amend and correct 58 Geo. 3, c. 69," reciting that act and that it was expedient to amend the same; it is enacted, that from and after the passing of this act, any person who shall be assessed and rated for the relief of the poor in respect of any annual rent, profit or value arising from any lands, tenements or hereditaments situate in any parish in which any vestry shall be holden under the said recited act, although such person shall not reside in or be an inhabitant of such parish, shall and may lawfully be present at such vestry, and such person shall have and be entitled to give such and so many vote or votes at such vestry, in respect of the amount of such rent, profit or value, as by the said act any inhabitant of such parish present at such vestry might or ought to have and be entitled to give in respect of such amount, and to all intents and purposes as if such person were an inhabitant of such parish; anything in the said recited act to the contrary in anywise notwithstanding (a).

Clerk or agent of corporation, &c., may vote in vestry according to the value of the premises rated

Sect. 2. That in all cases where any corporation or body politic or corporate or company shall be charged to the rate for the relief of the poor of such parish, either in the name of such corporation or of any officer of the said corporation, it shall and may be lawful for the clerk, secretary, steward, or other agent duly authorised for that purpose of

(a) The effect of this section and of sect. 3 of 58 Geo. 3, c. 69, is to make rating to the poor rate the exclusive qualification for voting in all parish vestries; so that where the small Tenements Act, 13 & 14 Vict. c. 99, is in force, the occupiers of small

tenements not rated to the poor, though liable to the church rate, are not entitled to vote at the vestry held for making a church rate. (*Richardson v. Gladwin and others*. 27 Law J. M. C. 192.)

such corporation or body politic or corporate or company, to be present at any vestry to be holden in the said parish under the said recited act; and such clerk, secretary, steward or agent, shall be entitled to give such and so many vote or votes at such vestry, in respect of the amount of the rent, profit, or value of such lands, tenements or hereditaments, as by the said act any inhabitant assessed to such rate present at such vestry might or ought to have and be entitled to in respect of such amount; anything in the said recited act to the contrary in anywise notwithstanding.

Sect. 3. Whereas by the said act, 58 Geo. 3, c. 69, s. 5 (*ante*), it was intended to be enacted, that no person should be present at or vote at any vestry who should have refused to pay any assessment that had become due and had been demanded of such person, but the word "and" was by mistake so inserted in the said act, as to make the same in that respect ambiguous; now to rectify such mistake, be it further enacted, that no person who shall have refused or neglected to pay any rate for the relief of the poor which shall be due from and shall have been demanded of him, shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same; nor shall any such clerk, secretary, steward, or agent, be entitled to be present or to vote, nor shall be present or vote, at any vestry in such parish, unless all rates for the relief of the poor, which shall have been assessed and charged upon or in respect of the annual rent, profit, or value in right of which any such clerk, secretary, steward, or agent shall claim to be present and vote, which shall be due, and which shall have been demanded at any time before the meeting of such vestry, shall have been paid and satisfied.

Non-payment of rates to disqualify from being present or voting in vestry.

In the parish of W., the "poor rates," according to an ancient custom, had always been made without respect to the value of property in the parish, but according to the supposed ability of the party charged: held, that persons so rated were not rated in respect of any annual rent, profit, or value, within the meaning of sect. 3 of the above act of 58 Geo. 3, c. 69, and, therefore, were not entitled to more than one vote at vestry meetings, although rated upon more than 50*l*. (*Nightingale v. Marshall*, 2 B. & C. 31; 3 D. & R. 549.)

Plurality of votes denied.

And where under a deed of feoffment, certain lands were granted to fourteen feoffees for the maintenance of a schoolmaster to instruct the children of all the inhabitants of a parish, and it was provided that no act concerning the lands should be done but in vestry or meeting of the feoffees, and ten at least of the inhabitants of the parish, which should be vestrymen, and not feoffees, in a vestry to be held by them, and a power of removal of the schoolmaster was given, so that it was with the consent and agreement of the feoffees and vestrymen, or the major part of them, which should be assembled in vestry:—it was held, that in the execution of the power of the removal of the master the votes were to be taken *per capita*, and not according to the provisions of sect. 3 of that act. (*The Attorney-General v. Wilkinson*, 7 Moore, 187; 3 B. & B. 266.)

When votes to be taken per capita.

Where a right of nominating a perpetual curate was given to the parishioners, the by-law or resolution of a parish vestry cannot exclude those who have not paid their church-rates. (*Faulkner v. Elger*, 4 B. & L. 449; 6 D. & R. 517.)

Voters who have not paid church-rates

But in *Edenborough v. Archbishop of Canterbury*, (2 Russ. 93,) Lord Eldon held, that where the advowson of a parish was vested in trustees or the benefit of the parishioners, the right of voting at the election may by long usage be limited to parishioners who pay church and poor's rates, and an election by such was confirmed.

The common law mode of election is by show of hands or by poll, and the party electing is then said to have a voice in the election.

Mode of voting.

It is clear, that, at common law, where parties have the right of

By ballot



1. Parish Vestries in General.

voting, the restriction of voting by ballot cannot be imposed: it presents an insurmountable difficulty to a scrutiny, because no person can tell for whom a particular individual voted. (See *Faulkner v. Elger*, 4 B. & C. 449; 6 Dowl. & RyL. 517; *Edenborough v. Archbishop of Canterbury*, 2 Russ. 93.) Besides, under the Vestry Act, where one person may have any number of votes to the amount of six, other objections might present themselves to voting by ballot. It is therefore evident that the common law mode of voting ought to be adhered to.

By proxy.

These reasons are equally cogent against voting by proxy. (See 17 *State Trials*, 822; *Steer's P. L.* 256.)

Casting vote.

As we have seen (*ante*, 1056), 58 Geo. 3, c. 69, s. 2, provides, that in all cases of equality of votes, the chairman shall (in addition to such vote, or as he may by virtue of the Vestry Act be entitled to give in right of his assessment) have the casting vote.

Majority conclusive.

The vote of the majority present will bind the whole parish. (*Watts*, 39; 2 *Lord Raym.* 1388; *Vin. Ab. Vestry* (a 3); *Dobson v. Fussey*, 5 M. & P. 112, & 7 *Bingh.* 305.) There might, however, be a case in which the vote of a minority might be binding. (See *Brain-tree Case*, *Keeley v. Burder*, 1 *Curteis*, 372.)

The chairman's power.

The chairman has in general the power to regulate the whole of the proceedings at the vestry; to decide on what they shall be, so as to insure the voters a reasonable time to vote; to adjourn the poll if he thinks fit, and to do all necessary acts on his own responsibility, being amenable for the propriety of his conduct to a court of justice. (*R. v. Doyley*, 4 P. & D. 58; 12 A. & E. 139.)

And he may adjourn the poll though against the wish of the majority present, but on his legal responsibility, if he improperly disturbs the proceedings by such adjournment. (*Id.*)

Granting a poll.

A poll being demanded he may, of his own authority, grant such poll. (*Id.*)

On the election of churchwardens at a vestry in such parish as above mentioned, a poll having been demanded, the rector granted the poll, and ordered it to be held immediately on the close of the other business, and continued for three successive days, at a time and place in the parish deemed by him most convenient, and which he had appointed by previous notice (after the publication of a summons by the old churchwardens) in case a poll should be demanded; and he refused to put a motion which had been proposed for a different appointment, of which a majority of the old churchwardens had given previous notice. The other business lasting till seven in the evening, he directed the poll should commence on the following morning, at the time and place of which notice had been given, a majority of the meeting (as was alleged) dissenting. The poll was taken accordingly, and it was held, rightly taken. (*Id.*)

Deciding by poll.

*Deciding by Poll.*—It is a general rule that when a thing is to be decided on by a majority of votes, they are to be taken by poll if required. (*Campbell v. Maund*, 5 A. & E. 865; 1 *Nev. & P.* 558; *Beechey v. Quentry*, 10 M. & W. 67; *per Lord Denman*, in *Reg. v. St. Mary's, Lambeth*, 3 *Nev. & P.* 416.)

At an election of churchwardens in open vestry, a poll of the parishioners was demanded under the Act 58 Geo. 3, c. 69; it was held that this was a legal demand, and meant a poll of such parishioners as were entitled to vote, and not of all the parishioners. (*Reg. v. St. Mary's Lambeth (Churchwardens)*, 3 *Nev. & Per.* 416.)

On the election of a surveyor of highways for a parish, the chairman of the vestry took a show of hands, but refused to allow a poll, which was demanded. On an application on behalf of the person who appeared successful on the show of hands, the court granted a rule *nisi* for a *mandamus*, commanding the inhabitants to meet in vestry and

ake a poll, on the ground that the election was imperfect. (*Ex parte 1. Parish Vestries in General.* *Throwsmith*, 5 *Jur.* 551—*B. C.*)

But where a vestry having by show of hands passed a resolution directing an illegal application of some charitable funds, and a poll having been demanded of the persons presiding at the vestry and not granted, the court refused a rule for a *mandamus* to compel such persons to grant a poll, observing that it ought not to grant a *mandamus* for the purpose of putting it to the vote whether a breach of trust should be committed. (*Rex v. Churchwardens of St. Saviour's, Southwark*, 1 *A. & E.* 381; 3 *Nev. & M.* 879.)

The decision of the chairman on a show of hands is not conclusive, but he is bound, on requisition from either side, to take steps for ascertaining the numbers. (*R. v. St. Pancras (Vestrymen), &c.*, 11 *A. & E.* 15; 4 *P. & D.* 66, *n.*)

Whether the proper course on such a requisition be to divide the meeting or at once to take a poll seems questionable. (*See id.*)

Where a *statute* directs an election by poll, the poll may be taken from the holding up of the electors' hands, but if the tellers appointed to take the numbers differ, and a poll is demanded and refused, the Court of Queen's Bench will grant a *mandamus* to enter an adjournment of the election meeting, and to proceed to complete the election. (*R. v. Vestrymen, &c., of St. Luke's*, 2 *N. & M.* 464.)

Every rated inhabitant, whether previously present at the vestry or not, has a right to come in and vote; and the closing of the vestry doors during the poll so as to exclude voters is illegal. (*Reg. v. St. Mary's, Lambeth (Churchwardens)*, 3 *Nev. & Per.* 416.)

And where upon the poll being demanded, it was resolved that it should be confined to the persons who were present at the show of hands which had already been made, and not be extended to the other parishioners who were entitled to vote; it was held, that this was illegal; but although illegal it could only render the election void in case persons entitled to vote were prevented from voting, and that not being shown, the election with locked doors was held a valid election. (*See Griffin v. Ellis*, 4 *Jurist*, 409.)

By a local act, the inhabitants of each district in the parish, in vestry assembled, were to nominate a certain number of persons to be returned to justices at petty session, who were to select therefrom a certain number to be overseers. At a vestry meeting for the above purpose, there was a contest as to the persons to be nominated; and, after a show of hands, a poll was demanded: it was held, that the nomination was not necessarily to be confined to the persons present at the meeting; but that a poll might be lawfully had on a future day, so that other persons entitled to vote might take part in the nomination. (*Reg. v. Hedger*, 4 *Per. & D.* 61.)

*Adjournment.*—The right of adjourning the meeting is not in the minister or any other person as chairman, nor in the churchwardens, but in the whole assembly, where all are upon an equal footing; and the same must be decided as other matters there, by a majority of votes. (*See Stoughton v. Reynolds*, 2 *Str.* 1045; and see the law as to adjourning vestries fully considered in the more recent case of *Baker v. Wood*, 1 *Curteis*, 552.)

But where a vestry being about to be held in M. for the election of churchwardens, notice was given that the meeting would be held in the parish church, but that if a poll was demanded it would be adjourned to the town hall—a poll being demanded, the chairman, without taking the sense of the meeting, adjourned the election to the town hall, where a poll was taken: it was held, that the proceeding was regular, no business having been interrupted by it, and the adjournment in a particular event being part of the original appointment. (*R. v. The Archdeacon of Chester*, 3 *Nev. & M.* 413; & 1 *Ad. &*

Fresh voters at a poll.

Adjournment under previous notice.

1. *Parish Vestries in General.* *Ell.* 342; *R. v. Doyley*, 12 A. & E. 139, *ante*; and see *R. v. Surrey Justices*, 4 *Jurist*, 1056, *ante*, 1055.)

Collusive adjournment.

A collusive adjournment of a vestry which has been called for a particular purpose, will be tantamount to a refusal to effect that purpose, and may justify the interference of the Court of Queen's Bench. (*R. v. St. Margaret's, Leicester, Select Vestry*, 8 A. & E. 889.)

Powers of vestry.

*Powers of Vestry.*—It is said by Mr. Steer, in his work on the parish law, that the vestry has the right to investigate and restrain the expenditure of the parish funds, to determine the expediency of enlarging or altering their churches and chapels, or of adding to or disposing of the "goods and ornaments" connected with those sacred edifices. The election of some of the parish officers is either wholly or in part to be made by the vestry, and it has, either directly or indirectly, a superintending authority in all the weightier matters of the parish. (*Steer*, *P. L.* 257.)

Allowing improper disbursements by overseers.

Where overseers made disbursements for the parish, which, by law, they were not authorised to do, and the vestry approved of such disbursements, and passed a resolution that they should be allowed in the overseers' accounts, the Court of King's Bench decided that the disbursements should not be allowed, and that the vestry had no jurisdiction in the matter, and could not bind the parish by their resolution. (*R. v. Gwyer and another*, 4 *Nev. & M.* 158. See *R. v. Welch*, 1 *Bott*, 318, 4th ed.)

Accounts,

Where a local statute confers a power of investigating accounts upon auditors to be annually elected, and to be summoned by the vestry clerk at certain stated intervals, to audit the accounts, the court will not grant a *mandamus* to compel the latter, when new auditors have been elected for the succeeding year, to call a meeting of the old auditors to audit the accounts of the past year. (*R. v. St. Giles & St. George's*, 1 *Dowl. P. C.* 540.) As to auditing accounts, &c., under the 1 & 2 Will. 4, c. 60, see *post*, 1078, and notes.

Distributing pews.

The vestry, as such, has no authority whatever in the distribution of pews; the churchwardens are not bound to follow their directions; at the same time the sense and opinion of the vestry ought to have weight with them. The vote of the vestry is of itself of no authority as to the question of right, but it marks the opinion of the parish. (*Sir J. Nichol*, in *Pettiman v. Bridger*, 1 *Phil. Ec. Ca.* 316.)

Monuments, &c.

As to setting up monuments, &c., see *ante*, "Churchwardens." (*R. v. St. Saviour's*, *infra*.)

Church rates.

As to the powers of the vestry, as regards church rates, see "Church."

Poor rates.

As to their powers as regards poor rates, see "Poor."

Acts of vestry binding.

If a vestry is called every parishioner is bound to attend; or if he do not, he is bound by the acts of those who do. (*Clutton v. Cherry*, 2 *Phil. Ec. Ca.* 380.) It seems, therefore, both reasonable and just that whoever impedes or obstructs them in the exercise of this right should be held responsible as for a personal injury. And to this effect is the case of *Phillybrown v. Ryland*, (as reported in *Stra.* 624,) as follows (though in *Lord Raym.* 1388, and *And.* 235, it is said the court gave no opinion upon this point). "The plaintiff brought a special action on the case for excluding him from the vestry room; and upon demurrer, the court made no difficulty but that such an action was maintainable; however, in this case, they gave judgment for the defendant, it not being averred that the parish had any property in this room, or right to meet there; so that, for aught appears, it might be the defendant's own house, and then he might let in whom he pleased, and refuse the rest. And this was a fault in substance, and need not be shown for cause of demurrer." (See also *Vin. Abr. title Vestry*; and see *Dobson v. Fussey*, 7 *Bing.* 305)

Obstructing their meeting.

A vestry meeting having, by a show of hands, passed a resolution directing monuments to be erected to the memory of certain persons who had left bequests to the parish, and that the expense should be paid out of the funds issuing from the bequests, the person who presided in the vestry having refused a poll, the Court of King's Bench refused a *mandamus* to compel him to grant a poll, because such an application of the funds would be a breach of trust, and the court would not assume that the result of the poll would be to rescind the resolution; and if the result would be the other way, it would be said that the poll was taken under the authority of a *mandamus* from the court. (*R. v. St. Saviour's, Southwark (Churchwardens)*, 1 A. & E. 380; 3 Nev. & M. 878. And see *Beckwith v. Harding*, 1 B. & Al. 505.)

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Mandamus will not lie to grant a poll for an illegal act, as for erecting monuments, &c.

*Review by next Vestry.*—The acts of one vestry are not absolutely binding on a succeeding vestry, and they may be confirmed or rescinded by such succeeding vestry; but the confirmation of the succeeding vestry is not necessary to make the acts of the preceding one valid. (*Mawley v. Barbet*, 2 Esp. 687.)

Review by next vestry.

*Minutes of Proceedings at Vestry.*—We have seen that by 58 Geo. 3, s. 69, s. 2, the minutes of the proceedings and resolutions of every vestry shall be fairly and distinctly entered in a book (to be provided for that purpose by the churchwardens and overseers of the poor), and shall be signed by the chairman and by such other of the inhabitants present as shall think proper to sign the same.

Entry of minutes of proceedings at.

As to the evidence of proceedings at, see "*Evidence.*"

Evidence of proceedings at.

*Jurisdiction of Ecclesiastical Court over Proceedings at.*—The Ecclesiastical Court has jurisdiction, *ratione loci*, over the order and proceedings of vestry meetings held in a church; and therefore, where a rector had libelled in that court a parishioner for preventing him from presiding as chairman at such meeting, a prohibition was refused. (*Wilson, D.D. v. M'Math*, 3 B. & Al. 241.)

Jurisdiction of ecclesiastical court over.

*Liability of Persons voting at.*—Inhabitants voting at the vestry in general incur no separate or individual responsibility for anything which may be done in pursuance of a resolution of vestry so signed by them. It has been therefore determined, that vestrymen who signed a resolution ordering the parish surveyor to take steps for defending an indictment for not repairing a road, were not to be responsible for the payment of the attorney employed by the surveyor; for in signing the resolution they act merely as vestrymen, without any intention of becoming individually responsible. (*Spratt v. Powell*, 3 Bing. 478; 11 Moore, 478; S. C. And see *Lancaster v. Frewer*, 2 Bing. 361; *Holmes v. Williamson*, 6 M. & S. 158; *Steer, P. L.* 257.)

Liability for contract by voting, &c.

So, where several parishioners joined at a vestry meeting in signing an order authorising two churchwardens to put a new roof on the parish tower, and both concurred in giving orders for that purpose, and one of them (the plaintiff) paid the artificers; and a rate for reimbursing them having been quashed, the plaintiff sued the defendant, being the other churchwarden, for a moiety of the money so paid:—it was held, that the defendant could not insist on those parishioners who had signed the vestry order, being joined with him as co-defendants in the action. (*Lancaster v. Fricker*, 8 Moore, 20; 1 Bing. 201.)

Several parishioners in the vestry signed a resolution in the vestry minute-book, stating that they approved of an action brought by the surveyor of the highways against A., and that they thereby guaranteed to him all legal expenses incurred by him in prosecuting that suit, his bound them personally, and rendered each person signing it incompetent to be a witness on the trial of that action. (*Heudebourck v. Langton*, 3 C. & P. 566—*Tenterden*.) A rule for a new trial was afterwards refused. (10 B. & C. 546.)

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Where one of two chapelwardens ordered goods for the use of the chapel, it was held that he might be separately sued for the amount. (*Shaw v. Hislop*, 4 D. & R. 241. And see further, *ante*, "Churchwardens.")

Vestry clerk, how chosen, and duties, &c.

*Vestry Clerk.*—The vestry clerk is chosen by the vestry, and he acts as registrar or secretary thereto; but he has no vote upon or right to take part in the questions submitted to the vestry. His business is to attend at all parish meetings, and to draw up and copy all orders and other acts of the vestry, and to give out copies thereof when necessary, and therefore he hath the custody of all books and papers relating thereto. (*Shaw's Par. L. c. 18.*)

The court will not compel the vestry clerk of a parish to produce and permit copies to be taken of documents from the parish chest in his custody for any other than parochial purposes. (*May v. Gwynne*, 4 B. & A. 301.)

If the parish books be in the custody of any other person, it seems that a vestry clerk may have a *mandamus* to compel the delivery of them to him. (*R. v. Croydon*, 5 T. R. 713.) Though in a later case, where the application was against a churchwarden, Lord *Ellenborough* said, "If the muniments belong to the vestry clerk, as annexed to his office, he may bring an action of detainer or trover;" and his lordship refused the rule. (*Anon. 2 Chit. R. 255.* And see *Steer's P. L. 59.*)

Duration of office.

The office of vestry clerk is not fixed and permanent for which a *mandamus* will lie. It depends altogether on the will of the inhabitants, who may elect a different clerk at each vestry. Neither is any salary annexed to this situation with regard to any supposed agreement made by the parishioners that this should be an annual office; it could not be obligatory longer than the parties chose to fulfil it, for it might be revoked at the next vestry. (*Per Lord Kenyon, in R. v. Croydon*, 5 T. R. 714; *Steer's P. L. 259.*)

Mode of poll.

As a general rule of law, the poll is required to be of the parishioners generally who are entitled to vote; and this rule of law was held not to be controlled by a local act (54 Geo. 3, c. 113, s. 3), which enacted that at a vestry meeting, to be held on Easter Tuesday in every year, all the vacancies in the list of governors and guardians of the poor should "be filled up by poll or ballot, or in such way of election as should be deemed most proper and convenient." At a vestry meeting held accordingly, the mode of election was that two candidates were proposed for each vacancy; on a show of hands being taken, the one, in whose favour it appeared to be, was declared elected; and then two other candidates were proposed for the next vacancy, and so on, till all the vacancies were filled up. One of the rejected candidates demanded a poll of the inhabitants of the parish, which was refused by the chairman, who proceeded to complete the elections according to the mode above described; it was held, that this mode of election could not be sustained, and that it was the meeting itself, and not the chairman, which was to pronounce what was the "most proper and convenient" mode of election, the right to determine the mode of election being limited to a choice among such modes as might best fulfil the object of the section, which was to secure the filling up of the vacancies by a real election made by the inhabitants in vestry assembled. (*R. v. St. Mary's, Newington*, 6 D. & L. 162.)

13 & 14 Vict. c. 57.

Poor Law Commissioners, upon application of churchwardens, &c., of any parish where

By 13 & 14 Vict. c. 57, s. 1, reciting that the holding of vestry or other parochial meetings in the parish church or chapel, or in the vestry room attached to such church or chapel, is productive of scandal to religion and other great inconveniences; it is enacted, "that it shall be lawful for the commissioners for administering the laws for relief of the poor in England, at any time or times after the passing of this act, upon application in writing of the churchwardens, or, where there are no churchwardens, of the overseers of any parish in

England the population whereof exceeds two thousand persons according to the then last preceding census, such application being made pursuant to a resolution of the vestry of such parish, to make an order under their seal of office that this act or any part thereof shall be applied to and be put in force within such parish; and a copy of such order shall be published in such newspaper or gazette, or both, as the said commissioners may direct, and shall be deposited with the churchwardens or overseers (where there are no churchwardens) of any such parish.

Sect. 2. That from and after the expiration of twelve calendar months from the making and publishing of any such order no meeting of the inhabitants of the parish for the purpose of holding a vestry, or for any other purpose than that of divine worship, or some ecclesiastical or charitable object, or some other purpose approved by the bishop of the diocese, shall be holden in any parish church or chapel, or other consecrated church or chapel, nor in the chancel thereof, nor, except in case of urgency, and with the previous approval of the said commissioners, in the vestry room attached to such church or chapel, in any parish or place named in such order, any public or private act of parliament to the contrary notwithstanding.

Sect. 3. That where any vestry or other meeting, by virtue of any statute, law or custom, has heretofore been holden in the church or chapel of any parish or place named in any such order as aforesaid, or in the vestry room of such church or chapel, any such vestry or other meeting shall from and after the making and publishing of such order be holden in such other room or place within the parish or place as shall be provided for the holding thereof in pursuance of the provisions of this act, and all acts done in such other room or place as aforesaid shall be as good, valid and effectual in the law, to all intents and purposes whatsoever, as if such vestry meeting had been held in the vestry room of such church or chapel or in the body of such church or chapel as aforesaid.

Sect. 4. That the churchwardens and overseers, or overseers alone, as the case may require, of any parish, with the sanction of the said commissioners and of a majority of the vestry, may by agreement hire any room, or purchase or take upon lease or exchange any lands or buildings, or sell lands belonging to such parish, and invest the proceeds of such sale in the purchase of other lands and buildings, or erect suitable buildings, for the purpose of holding of any vestry and other meeting for the transaction of any business of or relating to the parish; and the Lands Clauses Consolidation Act, 1845, except the parts and enactments of that act with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the recovery of forfeitures, penalties and costs, and with respect to lands acquired by the promoters of the undertaking, but which shall not be wanted for the purpose thereof, shall, in so far as the same is consistent with this act, be incorporated with this act; and for the purposes of this act the expressions "the promoters of the undertaking" or "the secretary," whenever used in that act, shall respectively mean the churchwardens and overseers, or overseers as aforesaid; and the expression "tolls or rates," whenever used in the said first-mentioned act, shall mean monies to be raised for the relief of the poor mentioned in this act; and all lands and premises which shall be so purchased or taken on lease by the churchwardens and overseers, or overseers as aforesaid, of any parish shall be conveyed, demised and assured to such churchwardens and overseers, or overseers alone as aforesaid, and their successors, in trust for the purposes of this act, and shall be accepted, taken and held by them as a body corporate, and the yearly rent reserved by any lease shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of any such parish, and shall be paid by the churchwardens and overseers, or overseers

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13 & 14 Vict. c. 57.  
population exceeds 2,000 may make an order to put this act in force.

On expiration of twelve months from the publishing of any such order certain meetings prohibited from being held in churches and chapels.

Power to provide other places of meeting.

Power to purchase lands, &c., under 8 & 9 Vict. c. 18.

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Poor Law Commissioners, on receipt of a resolution of the vestry, authorised to require money to be borrowed for the purposes of the act.

Churchwardens, &c., within one month after publication of order, to convene a meeting for electing a vestry clerk.

Vestry clerk elected at such meeting not to be removable except by resolution of vestry and consent of Poor Law Board, &c.

Duties of vestry clerk.

as aforesaid, of such parish as such rent becomes payable; and if at any time any such rent be not paid within thirty days after it so becomes payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the said churchwardens and overseers, or overseers as aforesaid, with costs of suit, by action of debt in any court of law, or may levy the same by distress of the goods and chattels of any of the said churchwardens and overseers, or overseers as aforesaid.

Sect. 5. That it shall be lawful for the poor law commissioners, by an order under their hands and seal, upon the receipt of a copy under the hands of the said churchwardens, or, where there are no churchwardens, of the overseers of any parish, of a resolution passed at a vestry duly convened and held for the purpose, after public notice of the time and place and purpose of holding such vestry shall have been given in like manner as notices of vestry meetings are published and given, consenting to the issue of such order, to direct the churchwardens and overseers, or, where there are no churchwardens, the overseers, and such churchwardens and overseers, as the case may be, are hereby required, if so directed by such order and resolution as aforesaid, to borrow any sum of money which may be required for the purposes of this act, and to charge the poor rates of the said parish with the repayment of the sum borrowed, for such purpose and the interest thereof, so nevertheless that the sum so borrowed shall be repaid by equal annual instalments not exceeding ten.

Sect. 6. And whereas in parishes whereof the population exceeds ten thousand persons as aforesaid various duties are by law imposed upon and required to be performed by the officers of parishes, and much business is transacted at vestry meetings, and the parish officers and vestries require the assistance of a vestry clerk in respect of such duties and business; and it is expedient that provision should be made for regulating the appointment and for the payment of such vestry clerks; be it therefore enacted, that the churchwardens or other persons to whom it belongs to convene meetings of the vestry in any such parish shall, within the space of one calendar month from and after the making and publishing of any order of the commissioners so applied for, if such order extend to the appointment of vestry clerk as aforesaid, and also, in case of any subsequent vacancy in the office of vestry clerk, within one calendar month next after such vacancy, convene a meeting of the vestry of any parish named in such order, for the special purpose of electing a vestry clerk, to perform such of the duties hereinafter mentioned as shall be applicable to such parish, in addition to those which are or may be imposed upon vestry clerks by any act or acts of parliament; and public notice of such vestry, and the place of holding the same, and the special purpose thereof, shall be given, in the usual manner in which notice of the meetings of the vestry is now given, at least seven days before the day to be appointed for holding such vestry; and at such meeting the vestry shall proceed to elect some fit and competent person to be vestry clerk, and the person so elected shall not be removable from office except by a resolution passed at a vestry to be called for that special purpose in the manner hereinbefore mentioned, and with the consent of the said commissioners for administering the laws for the relief of the poor in England, or by an order under the seal of the said commissioners.

Sect. 7. That it shall be the duty of such vestry clerk, unless otherwise directed by the poor law commissioners,

To give notice of and attend the meetings of vestry and committees appointed thereat;

To summon and attend meetings of the churchwardens and overseers, when required, and to enter the minutes thereof respectively;

To keep the account of all charity monies which the churchwardens or overseers are authorised or are accustomed to distribute :

1. *Parish Vestries in General.*

13 & 14 Vict. c. 57.

To keep the vestry books, and the parish deeds and documents, and the rate books and accounts which are closed, and to give copies of and extracts from the same to any person entitled thereto, such person paying for the same at the rate of fourpence for every seventy-two words or figures, and to permit any person or persons rated to the relief of the poor of the said parish, at all reasonable times, to inspect the same or any of them, on pain of dismissal for neglecting to give such copies or permit such inspection :

To make out, when required by the vestry, the church rate, and procure the same to be signed and completed, and to retain the custody thereof, and where there is no collector of poor rates or assistant overseer, to make out the poor rate, and procure the same to be allowed, and to make all the subsequent entries in the rate books, and to give the notices thereof required by law :

To prepare and issue the necessary process for recovering of arrears of such rates respectively before the justices, and procure the summons to be served, and to attend the justices thereon, and advise the churchwardens and overseers as to the recovery of such arrears :

To keep and make out the accounts of the churchwardens, and to present such accounts to the vestry or other legal authority, to be passed, and to examine the church rate collector's accounts and returns of arrears :

To assist the overseers in making out their accounts (whenever required by them), and, subject to the rules and regulations of the commissioners for administering the laws for the relief of the poor, to examine from time to time the accounts of the assistant overseers or collectors of poor rates, and their returns of arrears :

To attend the audit of accounts of the overseers, and conduct all correspondence arising therefrom :

To assist the churchwardens or overseers in preparing and making out all other parochial assessments and accounts, and in examining the accounts of the collectors of such assessments :

To ascertain and make out the list of persons liable to serve on juries, and to cause them to be printed and duly published, and returned to the justices :

To give the notices for claims to vote for members of parliament, and to make out lists of voters, and get the same printed and published, and duly returned, according to law, and to attend the court for revising them, and to prepare, make out, and publish the burgess lists and the lists of constables :

To make all returns required of the churchwardens or of the overseers by law or proper authority :

To advise the churchwardens and overseers in all the duties of their office ; and also to perform such other duties and services of a like nature as the said commissioners for administering the laws for the relief of the poor in England, from time to time, at the request of the churchwardens or overseers of any such parish, or otherwise, shall prescribe and direct to be performed by such vestry clerk.

Sect. 8. That the amount of salary or other remuneration to be paid to the vestry clerk, as well as the days and times on which and the persons by whom the same shall be payable, shall be fixed by the said commissioners, and altered from time to time as there shall be occa-

Salary of vestry clerk to be fixed by Poor Law Commissioners.



1. *Parish Vestries in General.*

13 & 14 Vict. c. 57.

Churchwardens and overseers not to be discharged from performance of duty.

Interpretation of terms.

"Parish."

"Churchwarden."

"Vestry."

"Lands."

"Masculine."

"Singular."

sion; and such salary or remuneration shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of any such parish; and, where the said commissioners shall deem requisite, such vestry clerk shall give such security and to such persons as the said commissioners shall by their order under seal direct; Provided always, that where, under the provisions of any local act or acts of parliament, any person or persons shall be paid for the performance of any of the duties of vestry clerk, or for assistance in the performance of any of the duties of churchwardens or overseers of the poor, nothing herein contained respecting the duties of the vestry clerk shall apply to or be deemed to apply to the performance of such duties while the same are so performed, or while payment shall be made for the performance of them as aforesaid.

Sect. 9. That nothing herein contained shall exempt or discharge, or be construed to exempt or discharge, any churchwarden or overseer of the poor from the performance of any duty required of him by law, nor oblige him to avail himself of the assistance of any vestry clerk to be appointed as aforesaid in the performance of his duties, unless he shall think fit so to do.

Sect. 10. That in this act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,) "parish" shall mean every place having separate overseers of the poor and maintaining its own poor, and also every parish or place having a separate ecclesiastical jurisdiction, and in which a vestry shall have been heretofore constituted and held for parochial as well as ecclesiastical purposes, either separately or jointly with any other parish; "churchwarden" shall mean also chapelwardens or other persons discharging the duties of churchwardens in any parish or place as last aforesaid; "vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry elected under 59 Geo. 3, c. 12, or 1 & 2 Will. 4, c. 60, or elected under the provisions of any local act of parliament for the government of any parish by vestries, or under or by virtue of any prescriptive custom or otherwise, in which parishes it shall mean select vestry; "lands" shall mean lands, tenements and hereditaments of whatsoever nature or tenure; words importing the masculine gender shall include the feminine; words of the plural number shall include the singular; words of the singular number shall include the plural.

## II. Of Select Vestries.

Origin of.

Select vestries seem to have grown from the practice of choosing a certain number of persons yearly to manage the concerns of the parish for that year, which, by degrees, came to be a fixed method; and the parishioners lost not only their rite to concur in the public management as oft as they would attend, but also in most places, if not in all, the rite of electing the managers; and such a custom of the government of parishes by a select number has been adjudged a good custom, in that the churchwardens accounting to them was adjudged a good account. (*Gibs*. 219.)

Exists by custom only.

It would seem that constant immemorial usage is the basis and only support of a select vestry.

Supersedes authority of a common law vestry.

Wherever a select vestry is appointed, the right of the common law vestry has always in practice been considered as *de facto* superseded. (*Clarke v. King*, 2 Y. & Jer. 525.)

Fallen into disrepute.

In some parishes these select vestries having been thought oppressive and injurious, great struggles have been made to set aside

and demolish them. (*Shaw's Par. L. c. 17.*) And no wonder that it has been so in such parishes where by custom they have obtained the power to choose one another, for it is to be supposed that if they are guilty of evil practices they will choose such persons as they think will connive at or concur therein. (4 *Burn, Ec. L. 10*; *Steer's P. L. 260.*)

A custom that there shall be a select vestry of an indefinite number of persons continued by election of new members made by itself, and not by the parishioners, is valid in law. And, *semble*, that it must be part of such custom that there should always be a reasonable number, and that the reasonableness of that number must be decided with reference to long-established usage and to the population of the parish, such custom having existed from time immemorial in a parish. (*Golding v. Fenn*, 1 *M. & Ry. 647*; 7 *B. & Cr. 765.*) In *Berry v. Banner*, (*Peake*, 156,) it was held that a select vestry could not be constituted by a faculty from the bishop.

## 2. Select Vestries.

Custom that the vestry shall be of an indefinite number.

Cannot be constituted by faculty.

But faculty does not destroy previous custom.

In the year 1662, by a faculty granted by the bishop of London, forty-nine persons, together with the vicar and churchwardens, were named as a select vestry, and that number was to be kept up by elections to be made by ten at least of those forty-nine, together with the vicar and churchwardens. In the year 1673, this number of ten was by another faculty reduced to seven, and these faculties were acted upon ever afterwards. Ten out of the fourteen vestrymen who were present at the vestry holden next before the promulgation of the first faculty were part of the forty-nine named in that faculty:—Held, that as the vestry appointed by the faculty, and since continued, was not inconsistent with the vestry previously existing by the custom, the custom was not destroyed by the parish having accepted the faculty and acted upon it ever since, the faculty not being binding in law, and the vestry having power at any time to depart from its directions. (*Golding v. Fenn*, 1 *M. & Ry. 647*; 7 *B. & Cr. 765.*)

A select vestry when it exists by custom for the management of parochial affairs cannot elect another select vestry for the management of the poor within the 59 Geo. 3, c. 12, amending laws for relief of the poor. (*Rex v. Woodman*, 4 *B. & Ad. 507.*)

Select vestry cannot elect another vestry.

By an act of parliament for paving, lighting, and watching the streets of the parish, the rector, churchwardens, and overseers of the poor, and vestrymen, were appointed trustees for putting the act in execution. By a subsequent act the trustees appointed to put the first act into execution were appointed trustees for executing that act, and the said trustees, or any thirteen or more of them, were authorised to elect four constables for the parish:—Held, that the presence of the rector at a vestry for the election of a constable was not necessary, if thirteen other trustees were present. (*R. v. Brain*, 3 *B. & Ad. 614.*)

Cases as to the constitution of select vestries.

By ancient custom a select vestry was to consist of the rector, churchwardens, and those who had served the office of upper churchwardens, and other parishioners to be elected by the vestrymen. The practice in modern times had been to elect as vestrymen those parishioners only who had been fined for not serving the office of upper churchwarden:—Held, that they were good vestrymen, for this practice was not inconsistent with the custom, for it was competent to the vestry at any time to elect other persons not of that class. (*R. v. Brain*, 3 *B. & Ad. 614.*)

What a good election by custom.

A vestry meeting on an unusual day for any special purpose is not legally constituted unless previous notice thereof has been given to every member of the vestry.

Notice should be given of meeting on an unusual day.

In justification of an assault the defendants pleaded "that they were *duly assembled* in a select vestry; that plaintiff, being an intruder, they forced him out of the room," one of the select vestry not having

## 2. Select Vestries.

Who may be a select vestryman.

received any notice of the meeting:—It was held, that the justification was not made out, as the meeting was not a legally constituted vestry, so as to support the allegation that the select vestry was *duly assembled*, it being a meeting called on special business on an unusual day; and, by analogy to the rules which prevail in summoning the members of a corporation, notice of the meeting ought to have been given to every member of the vestry. (*Dobson v. Fussey*, 7 Bing. 305; 5 M. & P. 112. And see *R. v. Martin*, 2 Camp. 100; *Thomas v. Morris*, 1 Addams' Rep. 470.)

An inhabitant may be a member of a select vestry, although he be a magistrate acting within the parish. (*R. v. Kent (Justices)*, 4 N. & M. 299; 2 A. & E. 409.)

An overseer may be a select vestryman, by virtue of an election by the parishioners, although he be also a member of the select vestry by virtue of his office. (*Id.*)

Oath by vestrymen.

A local vestry act directed that vestrymen should take an oath that they will faithfully execute the duties reposed in them as vestrymen appointed in pursuance of that act, and that they are duly qualified according to the rate of qualification thereby prescribed; by a public vestry act the constitution of the vestry was changed: vestrymen elected under the new act cannot be required to take the oath prescribed by the former act. (*Rea v. St. Pancras*, 3 Nev. & M. 435; 1 A. & E. 80.)

Colourable adjournment.

The select vestry adjourned from time to time, on pretexts which the churchwardens alleged, upon affidavit, to be, as they believed, colourable, and merely intended to evade laying the rate, requiring details which could not be furnished for want of funds to pay a surveyor, and fixing an adjournment day, after which a *mandamus* could not have been obtained for some months. It appearing that a previous select vestry had pursued the same course, and the present select vestry not satisfactorily denying the imputed motives, the court held the adjournment colourable and equivalent to a refusal. (*Reg. v. St. Margaret, Leicester (Select Vestrymen)*, 8 A. & E. 889.)

See further as to the adjournment of a vestry, *ante*, p. 1061.

Compelling vestry to make a church-rate.

Where an act of parliament authorised and required a select vestry from time to time, as often as occasion required, to make rates for the relief of the poor and the repair of churches and highways in the parish:—Held, that they were not compellable to make a church rate upon demand, while the churchwardens refused to state the necessary amount, or to furnish any estimate of it, or to give to the vestry any information whereby they might ascertain it. (*Reg. v. St. Margaret's, Leicester (Select Vestry)*, 10 A. & E. 730.)

Compelling them to appoint surveyor to certify as to goodness of a new road.

The court refused to compel a vestry to appoint a surveyor to certify that a newly-formed road had been properly constructed, drained, &c., which the vestry had the power to do under their local act, as that would cast the burden of repairing the road on the parish; and it appeared that it would not be so much for the benefit of the public as of the proprietors, during the time their buildings were completing. (*R. v. Paddington Vestry*, 9 B. & C. 456.)

14 & 15 Vict. c. 97.

From and after the passing of 14 & 15 Vict. c. 97, by sect. 23 thereof, No select vestry shall be formed under the provisions of the Church Building Act,\* and every such select vestry already formed under such provisions shall be and is hereby declared to be abolished, and all the powers and provisions therein enacted relative to such select vestries shall thenceforth cease and determine: provided that all matters and things done by any such select vestry in pursuance of any powers given thereby, such acts or any of them shall be and remain as valid as if such select vestry had not been abolished.

Vestries for affairs of the poor.

For the 59 Geo. 3, c. 12, relative to select vestries for the affairs of the poor, see "*Poor*."

For other purposes.

As to select vestries for special purposes, see "*Church*," "*Lighting and Watching*."

\* *Sic*. (58 Geo. 3, c. 45; 59 Geo. 3, c. 134.)

## III. Vestries under 1 &amp; 2 Will. 4, c. 60.

3. Vestries  
under 1 & 2  
Will. 4, c. 60.

By 1 & 2 Will. 4, c. 60, (commonly called Hobhouse's Act,) "An Act for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain Parishes of England and Wales," reciting, that, it is expedient to provide for the election of vestries, and of auditors of parish accounts, in certain parishes of England and Wales, it is enacted, That this act and the several provisions thereof shall apply to and may be adopted, under and subject to the regulations herein contained, by any parish or parishes in England and Wales.

1 & 2 Will. 4, c. 60.

Act may be adopted by any parish.

The object of the statute is to enable the inhabitants of any parish containing 800 rated householders, or being within or forming part of a city or town (sect. 43), to place themselves, if they shall think proper, under certain new regulations contained in its provisions, as to the constitution of its vestry, and the election of its vestrymen and auditors of accounts.

Object of act.

Sect. 2. That when in any parish certain of the rate payers thereof may desire that the said parish should come under the operation of this act, then and in that case any number of rate payers (a) amounting at least to one fifth of the rate payers of such parish, or any number of rate payers amounting at least to fifty parishioners, may, on some day between the 1st day of December and the 1st day of March, deliver a requisition by them signed, and describing their places of residence, to the churchwardens, or to one of them, serving for the said parish, requiring of the said churchwardens to ascertain according to the manner hereinafter mentioned whether or not a majority of the rate payers of the said parish do wish and require that this act and the provisions thereof should be adopted therein; and which requisition may be in the form or to the tenor and effect following; (that is to say,)

Manner of adopting it in parishes where inhabitants do not assemble in open vestry.

"To the churchwardens of the parish of [here insert the name of the parish.] We, whose names are hereunto subscribed, being rate-payers resident in the said parish, and respectively rated or assessed to the relief of the poor thereof, do hereby require you the said churchwardens to ascertain and determine the adoption or non-adoption of an act of the 2nd year of the reign of King William the Fourth, chapter , intituled 'An Act,' [here insert the title of the act]."

Form of requisition.

"Dated this       day of       in the year of our Lord       ."

Sect 3. That the said churchwardens of the said parish shall, on the 1st Sunday in the month of March next after the receipt of such requisition, affix or cause to be affixed a notice to the principal doors of every church and chapel within the said parish, specifying some day not earlier than ten days and not later than twenty-one days after such Sunday, and at what place or places within the said parish, the rate payers are required to signify their votes for or against the adoption of this act; which votes shall be received on three successive days, commencing at eight of the clock in the forenoon and ending at four of the clock in the afternoon of each day; and the said notice shall be to the following effect:

Upon receipt of requisition, churchwardens to give notice of time and place for receiving votes.

"The churchwardens of this parish [insert here the name of the parish] having received a requisition duly signed according to the provisions of an act of the second year of the reign of William the Fourth, chapter , for the better regulation of vestries, the rate-payers of this parish of [insert here the

Form of notice.

(a) It would seem that the requisition must come from poor-rate-payers. (*Hall v. Maule*, 2 Jurist, 887.)

3. *Vestries*  
under 1 & 2  
*Will.* 4, c. 60.

name of the parish] are hereby required, all and each of them, on the day of \_\_\_\_\_ next, and the two following days, to signify to the said churchwardens by a declaration, either printed or written, or partly printed or partly written, addressed and delivered to one of the churchwardens at \_\_\_\_\_ [insert here the place], their votes for or against the adoption of the aforesaid act for the better regulation of vestries by the rate-payers of this parish.

“(Signed)

Churchwardens.”

Sect. 4. The said declaration shall be to the following effect :

Form of declaration.

“I, A. B., of \_\_\_\_\_ Street, [or ‘place,’ or ‘house’] in this parish of \_\_\_\_\_, vote [‘for’ or ‘against,’ as the case may be], the adoption of the act of the second year of the reign of William the Fourth, chapter \_\_\_\_\_, for the better regulation of vestries by this parish.”

Churchwardens to declare whether the votes are in favour of adopting this act.

Sect. 5. The said churchwardens shall carefully examine the votes to them delivered as aforesaid, and shall compare them with the last rate made for the relief of the poor of the said parish, and shall be empowered to call before them and examine any parish officer touching the said votes, or any rate payer so giving his vote, and after a full and fair summing up of the said votes shall, by public notice, according to the form and manner hereinafter prescribed, declare whether or not two thirds of the votes given have been given in favour of the adoption of the said act: Provided always, that the whole number of persons voting shall be a clear majority of the rate payers of the parish: provided also, that the adoption or non-adoption of this act shall be decided by such number of votes as aforesaid (a).

Ratepayers may inspect votes.

Sect. 6. Provided always, that any of the rate payers of the aforesaid parish, not exceeding five together, may inspect, at or in the vestry room, or in some convenient place within the same parish, and they are hereby empowered to inspect the votes so given for and against the adoption of this act, at all seasonable times within one month after such notice shall have been given; and the churchwardens of the said parish are hereby required carefully to preserve the said votes, and freely to permit and allow the examination thereof by the aforesaid rate payers of the said parish at such seasonable times within the period aforesaid.

No person to vote unless he has been rated one year.

Sect. 7. Provided always that no person shall be deemed a rate payer, or be entitled to vote, or do any other act, matter, or thing, as such, under the provisions of this act, unless he or she shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such rate payer, and shall have paid all the parochial rates, taxes, and assessments due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such voting.

Notice of adoption of the act.

Sect. 8. Notice of the adoption of this act by any parish shall be forthwith given by the churchwardens for the time being of the said parish in the London Gazette and in one or more of the public newspapers circulating in the county in which the said parish may be situated, and by affixing a notice of the same to the principal doors of every church and chapel within the said parish; which notice shall be to the following effect:

“Parish of [here insert name of parish.]

“Notice is hereby given, that the above named parish has adopted the act of the second year of the reign of King William the Fourth, chapter \_\_\_\_\_, intitled ‘An Act’ [here insert the title of the act]; and that the numbers of the

(a) A parish having a particular custom as to the manner of choosing churchwardens, is not affected in this

particular by the adoption of this act. (Semb. R. v. St. James, Westminster, 5 A. & E. 391.)

majority and minority of votes given for and against the adoption of the said act are as follows; that is to say, votes for the adoption thereof, and votes against the adoption thereof.

3. Vestries under 1 & 2 Will. 4, c. 60.

"Dated this            day of            in the year of our Lord  
" (Signed)            Churchwardens."

Sect. 9. Provided always, that if the ratepayers shall determine, in the manner as aforesaid, against the adoption of this act, then and in that case it shall not be lawful to make another requisition for the same purposes within three years after such determination. No similar requisition to be made within three years.

Sect. 10. In any parish in which public notice of the adoption of this act in the manner as aforesaid shall be so made and given, this act shall immediately become the law for electing vestrymen and auditors of accounts of the said parish in manner hereinafter mentioned. This act to take effect in all parishes in which its adoption has been notified.

Sect. 11. If any churchwarden, rate collector, overseer, or other parish officer, shall refuse to call meetings according to the provisions of this act, or shall refuse or neglect to make and give the declarations and notices directed to be made and given by this act, or to receive the vote of any rate payer as aforesaid, or shall in any manner whatsoever alter, falsify, conceal, or suppress any vote or votes as aforesaid, such churchwarden, rate collector, overseer, or other parish officer, shall be deemed and taken to be guilty of a misdemeanor. Penalties on churchwardens and others refusing to call meetings, &c.

Sect. 12. On some Sunday at least twenty-one days previously to the day of annual election of vestrymen, notice of election, pursuant to this act, signed by the churchwardens, shall be affixed to the principal doors of every church and chapel of the said parish, and at other usual places, in the following terms (a): Notices of election to be given.

"Parish of [here insert name of parish].

"The parishioners duly qualified according to the provisions of the act of the second year of the reign of King William the Fourth, intituled 'An Act' [here insert the title of the act], are hereby required to meet at           , on the day of           , conformably to the provisions of the said act, and then and there to consider of and elect fit and proper persons to be vestrymen and auditors of accounts of the parish of           , for the ensuing year; that is to say,

Members of the Vestry.  
Auditors of Accounts."

Sect. 13. The churchwardens may summon the rate collectors to attend them on the said day of annual election, in order to assist them in ascertaining that the persons presenting themselves to vote are parishioners rated to the relief of the poor of the said parish, and duly qualified to vote at the said election. Rate collectors, &c., may be summoned to assist at the election.

Sect. 14. That on the day of annual election for vestrymen and auditors in any parish adopting this act, each parishioner then rated, and having been rated to the relief of the poor one year, desirous of voting, do meet at the place appointed for such election, then and there to nominate eight rate payers of the said parish as fit and proper persons to be inspectors of votes, four of such eight to be nominated by the churchwardens, and the other four to be nominated by the meeting; and after such nomination the said parishioners shall elect such parishioners duly qualified as may be there proposed for the offices of vestrymen and auditors: and the chairman shall at such meeting declare the names of the parishioners who have been elected by a majority of votes at such meeting (b). Form of proceeding at annual elections.

(a) By 58 Geo. 3, c. 69, s. 1, *ante*, 1054, only three days' notice is required.

(b) On the nomination of the eight inspectors to act in the election of

vestrymen, under this act, the decision of the chairman, on a show of hands, that one or the other party has a majority, is not conclusive, but he is bound, on requisition from either side,

3. *Vestries*  
under 1 & 2  
*Will.* 4, c. 60.

A ballot may be  
demanded.

Mode of voting.

Duty of inspec-  
tors.

In case of equality  
of votes.

Penalty for forg-  
ing or falsifying  
any voting list,  
or obstructing the  
election.

Public notice to

Sect. 15. Provided always, that any five rate payers may then and there, in writing or otherwise, demand a poll, which shall be taken by ballot, each rate payer delivering to the aforesaid inspectors two folded papers, one of which papers shall contain the names of the persons for whom such parishioner may vote as fit and proper to be members of the vestry, and the other shall contain the names of the persons for whom such parishioner may vote as fit and proper to be auditors of accounts: provided always, that each rate payer shall have one vote and no more for the members of the vestry, and one vote and no more for the auditors of accounts to be chosen in the said parish (a).

Sect. 16. The inspectors of votes shall deposit the said folded lists, without previously opening the same, in two separate sets of balloting glasses or boxes, one set for the vestry lists, and another for the auditors' lists; and that the said balloting glasses or boxes shall be closed at the time fixed for the termination of the voting, that is, at four of the clock of the afternoon of the last day of election.

Sect. 17. After the close of the said ballot the aforesaid inspectors shall proceed to examine the said votes, and if necessary shall continue the examination by adjournments from day to day, not exceeding four days, Sunday excepted, until they shall have decided upon the persons duly qualified according to the provisions of this act who may have been chosen to fill the aforesaid offices.

Sect. 18. If an equality of votes should appear to the aforesaid inspectors to be given for any two or more persons to fill any or either of the said offices, in that case the inspectors shall decide by lot upon the person or persons so to be chosen.

Sect. 19. If any person do forge or in any way falsify any name or writing in any paper or list purporting to contain the vote or votes of any parishioner as aforesaid so voting for vestrymen or auditors, or do by any contrivance attempt to obstruct or prevent the purposes of such mode of election, the persons so offending shall, upon information laid, and conviction before any two or more justices of the peace having jurisdiction in the parish so adopting this act, be liable to a penalty of not less than 10*l.* and not more than 50*l.*, and in default of payment thereof shall be imprisoned for a term not exceeding six nor less than three months; and any fine so levied shall be given, half to the informer who shall have informed against the person so offending, and the other half to the poor of the parish in which the said offence shall have been committed.

Sect. 20. The aforesaid inspectors shall, immediately after they

to take steps for ascertaining the numbers. (*Reg. v. St. Pancras (Vestrymen, &c.)*, 11 A. & E. 15; 4. P. & D. 66, n. S. C.)

*Quære*, whether the proper course, on such requisition, be to divide the meeting, or at once to take a poll? *Semble*, that, under stat. 1 & 2 Will. 4, c. 60, s. 11, a division is proper. (*Ib.*)

The mere existence of party feeling in the chairman is not sufficient ground for impeaching a nomination of inspectors under the statute; but if, after improperly refusing to ascertain the numbers voting, he has declared certain persons to be the inspectors nominated by the meeting, and the election of vestrymen has thereupon taken place, the court will grant a *mandamus* for a new elec-

tion, although a considerable time has elapsed; *e. g.* where the election took place May 6th, and a *mandamus* was moved for on June 6th, and cause was shown November 4th, the rule was made absolute November 21st. (*Ib.*)

If four inspectors have been improperly declared to be nominated by the meeting, such *mandamus* will be granted, although the other four inspectors were duly nominated by the churchwardens, and officiated at the election. (*Ib.*)

(a) By the 58 Geo. 3, c. 69, s. 3, (*ante*, 1057), persons rated for 50*l.* a year and less have one vote, and for every 25*l.* a year more in respect of which they are rated, one additional vote.

shall have decided upon whom the aforesaid elections have fallen, deliver to the churchwardens, or to one of them, serving for the parish so adopting this act, a list of the persons chosen by the parishioners to act as vestrymen and auditors of accounts; and the said list, or a copy thereof, shall be affixed to the doors of the churches and chapels or other places chosen for the purposes of public notice in the said parish.

3. Vestries under 1 & 2 Will. 4, c. 60.

be given of vestrymen and auditors chosen by parishioners.

Sect. 21. If any inspector as aforesaid shall wilfully make or cause to be made an incorrect return of the said votes, every such offender shall, upon information laid by any person before two or more justices of the peace having jurisdiction in the said parish, and upon conviction for such offence, be liable to a penalty of not less than 25*l*. and not exceeding 50*l*.

Penalty on inspector for making incorrect return.

Sect. 22. In all parishes adopting this act the meeting of parishioners for the election of the vestrymen and auditors of accounts by the parishioners shall take place in the month of May in every year: Provided always, that when a ballot is demanded at such election the same shall commence on the following day, and continue for three successive days, commencing at eight of the clock in the forenoon and closing at four of the clock in the afternoon on each day: Provided also, that the day on which such elections shall commence shall in the first instance be appointed by the churchwardens of the parishes adopting this act, but in every subsequent year shall be appointed by the vestry: Provided always, that when by reason of the populousness of any parish the said parish shall have been or shall be divided into districts for ecclesiastical or other purposes (a), then and in that case the said votes shall be taken, according to the aforesaid mode of election, in some convenient place, at the discretion of the churchwardens, in each of the several districts of the said parish.

Elections to be annual.

Sect. 23. In all parishes adopting this act the vestry appointed and elected as hereinbefore mentioned shall, when the said act shall come into full effect, consist of a certain number of resident householders; that is to say, twelve vestrymen for every parish in which the number of rated householders shall not exceed one thousand; and twelve other additional vestrymen, that is, twenty-four vestrymen, for every parish in which the rated householders shall exceed one thousand; and twelve other additional vestrymen, that is, thirty-six vestrymen, for every parish in which the number of rated householders shall exceed two thousand; and so on at the proportion of twelve additional vestrymen for every thousand rated householders: Provided always, that in no case the number of vestrymen shall exceed one hundred and twenty: Provided always, that in any parish wherein a greater number of vestrymen are given by special act of parliament than the proportions aforesaid will amount to, that then the number of vestrymen shall remain the same as given by such act of parliament; and provided always, that the rector, district rectors, vicar, perpetual curate, and churchwardens of the said parish shall constitute a part of the said vestry, and shall vote therein, in addition to the vestrymen as aforesaid elected under this act: Provided always, that no more than one such rector or other such minister as aforesaid, from any one parish or ecclesiastical district as aforesaid, shall *ex officio*, be a part of or vote at any vestry meeting.

Vestry to consist of not less than 12 nor more than 120 householders.

(a) A parish is not "divided into districts for ecclesiastical or other purposes," within this sect. 22, where a small portion of the parish is annexed to a chapelry, created in an adjoining parish, or where the parish has been, for the convenience of collecting the poor-rates, divided into

four districts, which districts have been adopted by the returning officer of a borough (within which the parish is situated), for the purpose of taking the poll at an election for members of parliament. (*R. v. St. Pancras*, 3 N. & M. 425; 1 A. & E. 80.)



3. *Vestries*  
under 1 & 2  
Will. 4, c. 60.

Proportion of existing vestry to go out of office at each of three first elections under this act.

Vestrymen to quit office after three years, and one third of the whole number to be elected annually.

Qualification of vestryman.

Sect. 24. At the first election for vestrymen after the adoption of this act in any parish, one third of the then existing vestry, or the nearest number thereto, but not exceeding the same, shall retire from office, (such portion to be determined by lot,) and the parishioners duly qualified shall elect a number of vestrymen equal to one third of the vestry, to be chosen according to the provisions of this act; and that on the next ensuing annual election for vestrymen one half, or as nearly as may be one half, of the remaining part of the first aforesaid vestry shall retire from office, (such portion to be determined by lot,) and the parishioners duly qualified shall again elect a number of vestrymen equal to one third of the vestry, to be chosen according to the provisions of this act; and that on the next, that is to say, the third annual election for vestrymen, the last remaining portion of the vestry as aforesaid shall retire from office, and the parishioners duly qualified shall elect vestrymen in like manner and number as at the two preceding elections, so as to fill up the vestry to the exact number of vestrymen prescribed by this act (a).

Sect. 25. At every subsequent annual election those vestrymen who have been three years in office shall go out of office, and the parishioners shall elect, according to the provisions of this act, other vestrymen, to the number of one third of the total number of which such vestry shall consist, as also fill up any vacancies which may have occurred from death or other causes: Provided always, that any or all of the vestrymen so going out by rotation may be immediately eligible for re-election.

Sect. 26. The vestry elected under this act in any parish not within the metropolitan police district or the city of London shall consist of resident householders rated or assessed to the relief of the poor upon a rental of not less than 10*l.*; and no person shall be capable of acting as one of the said vestry unless he shall be the occupier of a house, lands, tenements, or hereditaments rated or assessed upon the aforementioned amount of rental within the parish for which he is to serve: Provided always, that if the parish adopting this act should be within the metropolitan police district or the city of London, or if the resident householders therein should amount to more than three thousand, then and in that case the vestry elected under this act shall consist of resident householders rated or assessed to the relief of the poor of such parish upon a rental of not less than 40*l.* per annum (b).

(a) Wherever the act has been adopted, there must be elected at each of the first three annual elections one third of the whole number of which the vestry chosen under this act is ultimately to consist; and there must be deducted by lot from the original vestry, at the first election, one third of the number of vestrymen *then existing* (i. e. of the vestrymen then alive, without reference to the full number of the whole body, or of a complete vestry); at the second election, half the number of the original vestrymen *then existing*; at the third election, all the remaining original vestrymen. (*R. v. St. Pancras' Churchwardens*, 1 A. & E. 80; 3 N. & M. 425.)

(b) If a parish adopting the act be within the metropolitan police district, or the city of London, or contain more than 3,000 resident household-

ers:—It has been held, under this 26th sect. that the rental of 40*l.* being the qualification required for vestrymen, may be made up of tenements separately held, and not in the occupation of the vestryman. (*R. v. St. Pancras' Churchwardens*, 1 A. & E. 80; 3 N. & M. 425.)

The qualification must be perfect at the time of election; but if unqualified persons be elected, this does not avoid the election of qualified vestrymen or auditors elected at the same time. The election should be void so far only as respected the vestrymen improperly elected for want of qualifications. (*Id.*)

A parish which adopted the act had previously been governed by a vestry established by a local act, which defined the qualification of a vestryman, and prescribed an oath to be taken before any vestryman should be capa-

Sect. 27. From and after the adoption of this act in any parish the vestry shall exercise the powers and privileges held by any vestry now existing in such parish, and the authority of such vestry may be exercised before any justice or justices of the peace, or in any court of law, in regard to all parochial property, or monies due, or holdings or contracts, or other documents of the like nature, formerly under the control or in the keeping of the said vestry of the said parish; and all parish officers or boards shall account to them in like manner as they have accounted to the said vestry: Provided always, that nothing in this act shall be deemed, construed, or taken to repeal, alter, or invalidate any local act for the government of any parish by vestries, or for the management of the poor by any board of directors and guardians, for the due provision for divine worship within the parish, and the maintenance of the clergy officiating therein, otherwise than is by this act expressly enacted regarding the election of vestrymen and auditors of accounts.

Sect. 28. All powers or duties to be performed by the vestry of any parish adopting this act may be exercised and performed respectively by the major part of such vestry assembled at any meeting, there not being less than five vestrymen present at a meeting of a vestry which consists of twelve or more elected vestrymen and not exceeding twenty-five, and not being less than seven vestrymen present at a meeting of a vestry which consists of twenty-four or more elected vestrymen and not exceeding thirty-five, and not being less than nine vestrymen present at a meeting of a vestry which consists of thirty-six elected vestrymen or upwards; and all orders and directions given, and all contracts and engagements entered into by the vestrymen present at any such meeting, or the major part of them then assembled, shall be as valid and effectual as if the same were done by all the said vestrymen for the time being, and shall be binding and conclusive on all such vestrymen, provided that the same is confirmed at the next subsequent meeting of the vestry.

Sect. 29. In any case in which the vestry room of any parish in any town or city shall not be sufficiently large and commodious for any vestry meeting, such meeting shall be held elsewhere within the said parish or place, but not in the church or chapel thereof.

Sect. 30. At every meeting of any vestry, in the absence of the persons authorised by law or custom to take the chair, the members present shall elect a chairman for the occasion before proceeding to their business.

Sect. 31. The vestry of every parish adopting this act shall cause to be provided and kept a proper book or books, and proper entries to be made therein of the names of the several vestrymen who shall attend the respective meetings of the vestry, and of all orders and proceedings made or taken at such meetings; and all such books shall at all reasonable times be open to the inspection of the said vestrymen, and of any person rated or assessed to the relief of the poor of the said parish, and of any creditor on the rates of the said parish, without fee or reward; and the said vestrymen, persons, and creditors, or any of them, shall and may take copies of or extracts from such books respectively, without paying anything for the same; and in case the clerk to the said vestry, or other persons having the care of such books shall refuse to permit, or shall not permit the said vestrymen or such persons or creditors to inspect the same, or to take such

3. *Vestries*  
under 1 & 2  
*Will. 4, c. 60.*

Vestries appointed after the adoption of this act to exercise the authority of former vestries. Not to affect local acts regarding vestries, divine worship, &c., except as herein expressed.

The acts of a quorum of the vestry at any meeting to be considered as the acts of the vestry.

Meetings not to be held in the church.

Meeting to elect a chairman.

Proceedings to be entered in books to be open to inspection.

of acting in the execution of that local act; by the oath the person swore to execute the powers reposed in pursuance of the same, and that he was possessed of the qualification prescribed thereby, which was differ-

ent from that required by this statute:—It was held, that the oath prescribed by the local act was not to be taken by the vestrymen elected under this act, for it was no longer applicable. (*Id.*)

3. *Vestries*  
under 1 & 2  
*Will.* 4, c. 60.

Account books to  
be kept, and be  
open to inspec-  
tion.

Auditors to be  
chosen annually.

Qualification.

Further qualifica-  
tions of auditors.

Disqualification.

Mode of audit.

copies or extracts as aforesaid, such clerk or other person shall forfeit and pay any sum of money not exceeding 10*l.* for every such offence.

Sect. 32. The said vestry shall and they are hereby required to cause a book or books to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and disbursed for or on account of parochial purposes, and of the several articles, matters, and things for which such sums of money shall have been so received and disbursed; which book or books shall at all seasonable times be open to the inspection of the said vestrymen, and of any person or persons rated to the relief of the poor of the said parish, and of any creditor or creditors on the same, without fee or reward; and the said vestrymen and persons and creditors as aforesaid, or any of them, shall and may take copies of or extracts from the said book or books, or any part or parts thereof, without paying any thing for the same; and in case the clerk to the said vestrymen, or other person with whom such books shall remain, shall on any reasonable demand refuse to permit or shall not permit the said vestrymen, persons, or creditors, or any of them, to inspect the said book or books, or to take such copies or extracts as aforesaid, such clerk or other person as aforesaid shall forfeit and pay any sum not exceeding 10*l.* for every such offence.

Sect. 33. In any and every parish adopting this act, the parishioners duly qualified to vote for vestrymen as aforesaid shall elect five rate-payers of the said parish who shall have signified in writing their assent to serve to be auditors of accounts, which auditors shall be so elected on the first day on which the vestrymen shall be chosen after such parish shall have adopted this act, and according to the same forms of voting as are hereinbefore prescribed for the election of the said vestry: Provided always, that no person shall be eligible to fill the said office of auditor of accounts who shall not be qualified according to the provisions of this act, as hereinbefore stated, to fill the office of vestryman for the said parish; and provided always, that no person shall be eligible to fill the said office of auditor of accounts who shall be one of the vestry for the said parish; and if any person on the day of annual election shall be chosen to be both a member of the vestry and an auditor of accounts, the said vestry, at their first meeting after such election, shall declare the said person incapable of acting as vestryman: Provided also, that no person shall be eligible to fill the said office of auditor of accounts who shall be interested, either directly or indirectly, in any contract, office, business, or employ, or in providing or supplying any materials or articles for the parish for which he is to serve; and any person who shall be discovered, after his election, to be so interested, shall cease to be an auditor.

Sect. 34. The aforesaid auditors of accounts shall meet twice at least in each year, at the board room of the vestry, and (a majority of the said auditors being present at such meetings) shall proceed to audit the accounts of the said vestry for the preceding half year, in presence of the vestry clerk; and the said vestry are hereby required by their said clerk, to produce and lay before the said auditors at every such meeting a true and just statement or account in writing, accompanied with proper vouchers, of all sums of money which may have come to the hands of the said vestry, or of their treasurer, and also of all monies paid, laid out, or expended by them, or by any churchwardens, overseers, surveyors, or other persons by them employed, and responsible to the said vestry, since the last period up to which the accounts of the said vestry were audited; and in all parishes in which other boards shall have control over any part of the parochial expenditure, the said auditors shall have the same power of examining the accounts and officers thereof as of examining the accounts

and officers of the vestry, and shall audit the accounts of the said boards in the same manner, as they audit the accounts of the said vestries. (a).

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under 1 & 2  
*Will.* 4, c. 60.

Sect. 35. The said auditors shall have power to summon and call before them, by a writing for that purpose signed by any one of them, or by the clerk of the vestry of any parish adopting this act, any parish officer or other person or persons whatsoever concerned in the said accounts, and to require of him or her or them to attend the said auditors at any meeting or adjourned meeting, and to bring with them all books of accounts, writings, papers, and documents required, which may concern the said accounts, and to give such information as to the particulars of such accounts as he, she, or they shall be enabled to give (b); and any parish officer or other person refusing so to attend, or otherwise wilfully obstructing the purposes of such inquiry, shall be deemed guilty of a misdemeanor.

Auditors may call  
for persons and  
books.

Sect. 36. The said accounts, when audited and approved by the said auditors, or by the major part of them, shall be by them signed in the presence of the clerk of the aforesaid vestry of any parish adopting this act, and the said clerk of the vestry shall also affix his signature to the same; and it shall be lawful for the aforesaid auditors to subjoin such remarks thereto as to them shall seem meet.

Accounts to be  
signed by auditors.

Sect. 37. The said accounts, when so audited and signed, shall remain at the office of the clerk of the said vestry; and that the said accounts shall after such audit be open and accessible for the examination, at all seasonable times, of any person rated to the relief of the poor of the said parish, and of any creditor on the rates thereof: Provided always, that nothing in this act contained relative to the appointment and duty of auditors shall debar the parishioners from any remedy by them before possessed by the law of the land.

Accounts after  
audit to be open  
to inspection.

(a) It will be seen that this section enacts that the auditors "shall meet twice at least in each year, at the board room of the vestry, and (a majority of the said auditors being present at such meeting)", shall audit the accounts of such vestry, and the vestry are required "at every such meeting" to produce a true account in writing, &c., and the auditors are to have the same power of examining the accounts of certain other boards, and are to audit them in the same manner. A mandamus issued, calling upon a board to attend with and produce to the auditors their accounts, *at such time and place, or at such times and places* as a majority of the auditors might appoint, and then and there give such information as to the accounts as they might be enabled to give, *according to the directions of the act*. On return to such mandamus and concilium obtained on the part of the Crown:—Held, that the mandamus exceeded the authority given by the act, and that the court could not in part enforce it by a peremptory mandamus, limited as to the place of meeting; and the court quashed the mandamus. (*R. v. New Church Trus-*

*tees of St. Pancras*, 3 A. & E. 535; 5 N. & M. 219.)

A mandamus to account before auditors under the above act, recited that the auditors "duly appointed and acting under and by virtue of an act," &c., "in exercise of the powers given to them by the said act," had summoned the parties to account:—Held, that in a mandamus for this purpose it was not necessary to state more fully the adoption of the act by the parish, and the due appointment of the auditors. (*Id.*)

*Semble*, that all boards, &c., having power to levy rates on the inhabitants of a parish which adopts the act, are compellable to produce and explain their accounts before the auditors. (*Id.*)

Auditors of parish accounts appointed under this act, can hold meetings only in the board-room of the vestry. (*Id.*)

(b) Church trustees, under a local act, must produce their accounts under this act, where it has been adopted by the parish. (*Rev. v. St. Pancras Church (Trustees)*, 6 A. & E. 314.)

3. *Vestries*  
under 1 & 2  
*Will.* 4, c. 60.

Abstracts of accounts to be published fourteen days after being audited.

Vestry to make out and publish yearly a list of estates, charities, and bequests, &c., with the application thereof.

Saving of ecclesiastical jurisdiction.

Meaning of terms used in this act.

As to affixing notices.

Act not to extend to parishes where not more than 800 rate-payers, except in cities or towns.

Sect. 38. An abstract of the accounts of all monies received and disbursed by the vestry in any parish adopting this act shall twice in every year, within fourteen days after the same shall have been audited in manner in this act mentioned, be made out by the said vestry, either in writing or in print, and a copy of such abstract shall be delivered to all persons applying for the same, and rated or assessed to the relief of the poor of the said parish, such person paying 1s. for the same; and which copies the said clerk is hereby required to cause to be published either in writing or print, and distributed accordingly.

Sect. 39. In any parish adopting this act the vestry shall cause to be made out, once at least in every year, a list of the several freehold, copyhold, and leasehold estates, and of all charitable foundations and bequests, if any, belonging to the said parish and under the control of the said vestry, the said list to contain a true and detailed account of the place where such estate or charitable foundation may be situate, or in what mode and security such bequest may be invested, specifying also the yearly rental of each, and the particular appropriation thereof, together with the names of the persons partaking of their benefit (except where such benefit shall be allotted to the poor of the parish generally), and to what amount in each case, and also stating the name and description of the persons in whom such estates are vested, and the names and description of the trustees for each charity: Provided always, that the aforesaid list shall be open for the inspection of the rate-payers, at the office of the vestry clerk, at the same time with the accounts when audited according to the provisions of this act.

Sect. 40. Provided always, that this act or any thing therein contained, shall not extend to or be construed to extend to invalidate or avoid any ecclesiastical law or constitution of the Church of England, save and except so far as concerns the appointment of vestries, or to destroy any of the rights or powers belonging to the archbishops, bishops, deans, or other of the clergy of the said established church, either as individuals or as corporate bodies, or in anywise to abridge or control the ordinary jurisdiction over or relating to any matter or thing respecting the ministers thereof.

Sect. 41. And in order to remove doubts as to the meaning of certain words in this act, be it enacted, that the word "justice" shall be deemed to mean justice of the peace; and that the words "person" and "party" shall be deemed to include any number of persons or parties; and that the words "justices of the peace of the county or city" shall be deemed to include justices of the peace of any division of a county, liberty, division of a liberty, precinct, county of a city, county of a town, cinque port, or town corporate; and that the word "parish" shall be deemed to include any liberty, precinct, township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor; and that the word "rate-payers" shall include "ley-payers;" and that the meaning of the several words in this act shall not be restricted, although the same may be subsequently referred to in the singular number or masculine gender only.

Sect. 42. The words "church or chapel," inasmuch as regards the affixing of notices as by this act directed, shall be deemed to include all places of religious worship according to the forms of the established church; and that in any parish or place not having a parish church or chapel as aforesaid, the said notices shall be affixed to some public building within the limits of the said parish or place.

Sect. 43. Provided always, that nothing in this act contained shall extend to any parish not being within or being part of any city or town, in which parish there shall not be a greater number than 800 persons rated as householders, and having paid the rates for the relief of the poor within the year preceding that in which the pro-

visions of this act may be desired to be put in execution within such parish.

Sect. 44. This act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without the same being specially pleaded.

3. *Vestries*  
under 1 & 2  
*Will.* 4, c. 60.  
Public act.

## Wales.

AS to the venue of offences in, see "*Indictment.*"

By 20 Geo. 2, c. 42, s. 3, in all cases where the kingdom of England or that part of Great Britain called England, hath been or shall be mentioned in any act of parliament, the same has been and shall be taken to comprehend the dominion of Wales and town of Berwick.

By the 1 Will. 4, c. 70, "An Act for the more effectual Administration of Justice in England and Wales," sect. 13, the jurisdiction of her Majesty's Courts of King's Bench, Common Pleas, and Exchequer, respectively, and of the several judges and barons thereof, is extended over and within the county of Chester and the county of the city of Chester, and the several counties in Wales, in like manner, to the same extent, and to and for all intents and purposes whatsoever, as the jurisdiction of such courts respectively is now exercised in and over the counties of England not being counties palatine.

Sect. 19. From and after the time herein appointed for the commencement of this act, assizes shall be held for the trial and despatch of all matters, criminal and civil, within the county of Chester and the several counties and county towns in the principality of Wales, under and by virtue of commissions of assize, oyer and terminer, gaol delivery, and other writs and commissions to be issued in like manner and form as hath been usual for the counties in England; and all laws and statutes now in force relating to the execution of such commissions, when issued for counties in England, shall extend and be applied to the execution of the commissions issued for the county of Chester and the counties of Wales under the authority of this act.

Sect. 20. Until it shall be otherwise provided by law, one of the two judges appointed to hold the sessions of assizes under his Majesty's commission within the county of Chester and principality of Wales shall, in such order and at such times as they shall appoint, proceed to hold such assizes at the several places where the same have heretofore been most usually held within South Wales; and the other of such judges shall proceed to hold such assizes at the several places where the same have heretofore been most usually held in North Wales; and both of such judges shall hold the assizes in and for the county of Chester in like manner as in other counties of England.

Sect. 27. The records, muniments, and writings of the several courts abolished by this act shall, until otherwise provided by law, be kept by the same persons and in the same places as before the passing of this act; and that the Court of Common Pleas shall have the like power and authority to amend the records of fines and recoveries passed heretofore in any of the courts abolished by this act, as if the same had been levied, suffered, or had in the Court of Common Pleas: Provided always, that in case of the death of any such person before any other provision shall have been made for keeping such records, muniments, and writings, the custody thereof shall be with the clerks of the peace of the several counties to which counties the same shall respectively belong.

Sect. 33. The clerk of assize, within ten days after the conclusion of the assizes in the county of Chester, and in each county in Wales,

20 Geo. 2, c. 42.  
Deemed part of  
England.

1 Will. 4, c. 70:  
Jurisdiction of  
courts at West-  
minster extended  
to counties pala-  
tine, &c.

Assizes to be held  
in Chester and  
Wales.

Mode of holding  
assizes in Chester  
and Wales until  
his Majesty shall  
otherwise direct.

Records of the  
several courts  
abolished to be  
kept as hereto-  
fore, until other-  
wise provided for.

For passing ac-  
counts of sheriffs

1 Will. 4, c. 70.  
of county of Ches-  
ter and princi-  
pality of Wales.

shall make out a roll containing the names and places of residence of all persons liable to the payment of any fines, issues, amercements, recognizances, compositions, or other sums imposed or forfeited during the preceding assizes, with the sums set opposite to each name, and shall forthwith transmit the same to the sheriff, with an order upon the sheriff, signed in the name of one of the judges of assize, directing the sheriff to cause such sums to be levied and recovered from the parties liable to pay the same, which order shall be of the same force and efficacy, and be returnable to the same person or persons, as any writ or process heretofore issued to the sheriff for the like purpose; and the sheriff, upon the receipt thereof, shall proceed to levy the sums in the said roll mentioned, and shall be accountable for the same, and all arrears thereof, in the same manner, at the same time, and to the same officer, and shall pass his accounts before the same officer or officers, as he hath been heretofore accustomed.

When quarter  
sessions are to be  
held.

Sect. 35. In the year of our Lord 1831, and afterwards, the justices of the peace in every county, riding, or division for which quarter sessions of the peace by law ought to be held, shall hold their general quarter sessions of the peace in the first week after the eleventh day of October, in the first week after the twenty-eighth day of December, in the first week after the thirty-first day of March, and in the first week after the twenty-fourth day of June; and that all acts, matters, and things done, performed, and transacted at the times appointed by this act for the holding of the general quarter sessions of the peace shall be as valid and binding to all intents and purposes as if the same had been done, performed, and transacted at general quarter sessions of the peace holden at the times by law limited for the holding thereof before the passing of this act.

5 Will. 4, c. 1:  
Execution of  
criminals.

By the 5 Will. 4, c. 1, passed to explain the above act, so far as relates to the execution of criminals in the county of Chester, it is enacted, by section 1, that the sheriffs of the county of the city of Chester may execute criminals condemned to die for offences committed within the county; and by sect. 2, the judge before whom any criminal shall be convicted, may make an order upon the sheriff of the county to execute such criminal in any place not within his jurisdiction.

As to the management of turnpike roads and highways in the six counties of South Wales under 7 & 8 Vict. c. 91, and 14 & 15 Vict. c. 16, see "*Highways*."

### Wapentake.

The same as a hundred. It is especially used in the north counties above the Trent. *Bract. C. 3 Lamb.* See further, title "*Hundred*."

## War, Intestine,

### AS AFFECTING MARTIAL AND COMMON LAW.

[9 Hen. 3, c. 29; 25 Edw. 1, st. 1, c. 1; 5 Edw. 3, c. 9; 25 Edw. 3, c. 4; 28 Edw. 3, c. 3; 42 Edw. 3, c. 3; 3 Chas. 1, c. 1.]

THE broad principles that regulate the trial of English subjects on charges of crime laid against them, were declared by statute and recognized by decision of high judicial authority at a very early stage

of our history, and Sir M. Hale, when he comments on these authorities, deduces the following rules from them:—

1st. That it is a time of peace at home when the constituted courts of law are open, and thus able to try offences against the law.

2nd. That in this time of peace every subject charged with crime ought to be arraigned and put to answer the charge before he is condemned.

3rd. That his trial should be by a jury of his country, and not by record of the king.

These principles are founded on the accepted meaning and application of ch. 29 of Magna Charta, which declares,

“That none shall be condemned without trial.

“No freeman shall be taken or imprisoned, or be disseized of his freehold or liberties of free customs, or be outlawed, or exiled, or any otherwise destroyed, nor will we pass upon him or condemn him, *i.e.*, no man shall be condemned at the king’s suit either before the king in his Bench, or before any other commissioner or judge whatever, but by lawful judgment of his peers or by the law of the land.”

9 Hen. 3, c. 29.

The charter containing this fundamental law is expressed to be granted by the free will of the king, to be kept in his kingdom of England for ever, and the liberties contained in it to be given for the king and his heirs for ever, to all freemen of the realm to have and to hold to them and their heirs of the king and his heirs for ever. Words more ample to bind succeeding kings for all future times cannot be found.

But the insufficient efficacy of declared law alone to secure the enforcement of its principles is abundantly shewn by the irregular manners of those unsettled ages. Until a system of continued action by the organized and constitutional powers of the subject was matured and brought to bear, the more simple and united power of the crown was able with impunity to overstep the barriers of statutes and of acknowledged law.

Such want of a regular security for public liberty frequently led to combinations against the throne by rebellious barons as an irregular means of thwarting or correcting the violations of law by the arbitrary hand of power. The same sense of insecurity led to the less violent system of procuring oft-repeated confirmations of the charters, from rulers who assumed to be free from their binding force.

This feeling led to that confirmation of charters in the 25 Edw. 1, that seemed to re-enact what should then have been considered already to be the settled and undoubted law of the land.

25 Edw. 1st, st. 1, c. 1.

By stat. 1, in 1297, the king grants for himself and his heirs that the charters of liberties and of the forest shall be kept in every point without breach.

For this object they are to be sent to the justices of the forest, sheriffs, and other officers, and to all cities of the realm, and there published, with a declaration to the people, that they had been confirmed in all points.

Special provisions are made for the allowance of these charters, when pleaded before the several ministers of justice, that judgments given against their effect should be void. That they should be read in cathedral churches twice in the year, and excommunication pronounced against the breakers of them.

By these securities were the above principles of judicial trials ensured at the close of the 13th century.

But on the trial of Thomas Earl of Lancaster, before Edw. 2nd, in 1322, these principles were disregarded. As a peer he was entitled to trial by his peerage. The events that led to and immediately attended that trial and the review of them on appeal therefrom to parliament

A.D. 1322.  
Earl of Lancaster's trial.



(then considered a high court of justice) (a), explain what that tribunal understood the law to be that governed the trial of subjects charged with criminal offences against the crown.

The earl had been a leading spirit of the confederate barons in their open resistance to Edw. 2nd, and was General of their forces. They had put the *favourite* Gaveston to death; the two De Spensers, then *royal favourites*, were the especial objects of his hostility, and had been banished by his means. Military force had been used by Edward to punish resistance to his own authority. He had besieged and taken Leeds Castle belonging to Bartholomew Badlesmere, to resent an insult offered to Queen Isabella, who had been refused reception there on her pilgrimage to Canterbury.

Throughout this king's reign the barons had rarely suspended their armed resistance to his extravagant courses under the influence of unworthy favourites. But after reducing Badlesmere's castle, the king, by a vigorous conduct of his forces into the Midland counties, took Warwick Castle, and surprised and dispersed the confederates. This forced Lancaster to retire towards the north to seek the aid of the Scots. In this retreat being followed by the king, he, at Burton-on-Trent, checked the advance of the royal forces in their passage of the bridge over that river. The king effected a crossing at another point, and Lancaster, unable to cope in the open field with the powers of his opponent, retreated to Boroughbridge, and there attempted to pass the River Ure. The governors of Carlisle and York had been ordered to advance and cut off his retreat, and in the conflict with them at Boroughbridge on the 16th of March, Lancaster's forces were routed and he himself was captured. He was taken to Pontefract Castle, his own property, to which the king came shortly after, and on Monday 22nd March, was there tried and executed. The record of the trial bears date 2nd May under the king's hand at York (Rymer, vol. 3, p. 936). It sets forth "that the earl having been arrested for treasons, murders, arsons, robberies, and felonies, was tried in the presence of the king at Pontefract on Monday next preceding the annunciation, 1322, before seven earls (who are named) and barons and men of rank, on the charge that he, (with others there mentioned,) was at Burton-on-Trent with banners displayed in open war against the king, and there opposed the king and his forces and attendants for three days together in their passage of the bridge at Burton, and slew the king's followers, so that he had to find a passage elsewhere across the Trent, and march against the earl, who thereon set fire to the town of Burton and burnt part of it, and then vacating it with his force and banners, marched against the king in violation of his homage, fealty, and allegiance due to the king. That he then fled, and in his flight committed divers robberies, and came with horsemen, arms, and banners to Boroughbridge, where the royal forces authorised to oppose him were by him attacked and slain, when he was taken prisoner with others." It then states, "that these treasons, &c., and levying of war with horsemen, arms, and banners displayed, being obvious, notorious, and well known to the earls, barons, and men of rank, and to the inhabitants of the realm, it is therefore decided that the earl, for his said treasons be drawn, and for the other felonies hung, and for his flight, beheaded." The record further recounts a series of earlier instances in which Lancaster had been in open rebellion against the king.

The method here pursued of acting on the notoriety of the facts

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(a) Put an end to by 1 Hen. 4, c. 14.  
 "That many great inconveniences, &c., happened by many appeals made within the realm of England;—it is

accorded and assented, that no appeals be from henceforth made, or anywise pursued in parliament in any time to come."

charged against the prisoner, and on the knowledge of them by the judges who tried him, without the production of other evidence, seems to have been familiar by a course then known to the common law in criminal trials. A prisoner might in those days be accused of treason or felony, by arraignment without indictment, when taken with the "mainouer," or, as it is also termed "*cum manu opere*," if trial proceeded immediately after the prisoner was taken in the act. (*Hale, P. C. Pt. I. Chs. 16 and 26.*) Many other barons suffered shortly after at York and London by like course of trial. Of these executions the historian observes that never since the Norman conquest had the scaffolds been drenched with so much English blood, as upon this occasion. Rapin.

This record was brought by appeal into parliament, and thereon errors assigned, in 1st year of Edw. III. (*Hale, P. C. Pt. I. Ch. 26.*) A.D. 1327.

At that time the party of Lancaster was paramount, and it may be thought that as the parliament was then chiefly composed of his partizans who had suffered by his overthrow, and of the adherents of Queen Isabella, who then favoured his cause, that they would be well disposed favourably to entertain the reversal of his sentence of attainder.

The errors assigned, on which the judgment was reversed, were these:—

1st. "That every subject taken in *in time of peace* on charge of sedition, homicide, robbery, arson, and other felonies, to whatever court he be brought for such imputed crimes, ought to be arraigned according to law and custom of the realm, and put to answer, and thereof convicted according to law before he is condemned to death. Yet the earl, being a subject of the king, &c., had been taken *during peace* and brought before the king himself, who had recorded him guilty of the alleged crimes contained in the record *without his being arraigned or put to answer* according to law, and for which he had been sentenced to death during a *time of peace* without being *arraigned* or allowed to *answer* (erroneously and contrary to the law of the land) that at the time of his being taken, and when he had been found guilty and sentence passed, there was *peace*, and especially during the whole of that time the Chancery and other *Courts of the king were open*, in which the law could be enforced as it should be, nor was the king then in any manner in the field with banners displayed."

2nd. "That the earl was a peer of the realm, and by Magna Charta it is provided that no free man be taken, imprisoned, or disseized of his freeholds or liberties of free customs, or be outlawed, or exiled, or any otherwise destroyed, nor shall he be condemned at the king's suit, either before the king in his bench, or before any other commissioner or judge whatever, but by lawful judgment of his peers or by the law of the land. Yet the said earl, according to the said record, had been *condemned to death during the time of peace*, without being *arraigned and put to answer*, and without the *verdict of his peers*, against the tenor of Magna Charta."

The decision on these assignments was that upon examination of the record, the judgment given against Thomas, Earl of Lancaster, be reversed and annulled on the ground of these errors and of others found in the record and procedure.

The heads of error selected by the lawyer who drew these assignments are in principle so founded on natural justice as to be, in that respect, incontrovertible. That if the king's peace be maintained, a subject of the realm and under protection of its laws should of right be entitled, when charged with crime, to trial before the only known tribunals established for such purpose, and that on such trial he should be distinctly arraigned of some alleged offence, and allowed to answer in his own defence before he is condemned, are such simple

maxims of plain justice as to be accepted in all societies that have passed from barbarous to civilized laws.

In this appeal these maxims are twice pleaded, first as founded on the general law of the land, and again on the principles declared by Magna Charta. Their violation is specially urged as illegal, and their binding force is founded, on the constitutional ground that when this trial took place it was *a time of peace*, when the courts of the king were open and available for administering the law, and when the king was not in the field with forces and with banners displayed, and the judgment of parliament directly affirms the soundness of this ground by reversing the attainder.

The facts to which these principles of criminal justice and of Magna Charta were then applied, could be gathered, excepting as to the *time of peace*, from the record of the trial itself.

From that it was apparent that sentence had been passed on a subject of the realm who had not been tried by his peers, had not been regularly arraigned, nor been heard in his own defence.

It must, however, have been determined by other means, that the trial took place during a time of peace, and when the king was not in the field with banners displayed.

What is "Time of Peace."

The disturbed state of the realm in the month of March 1322 (the time of the trial), was known to have arisen from the military forces then opposed to each other in arms in the field. The one led by the king had been attacked at the passage of the Trent by that led by Lancaster. Each must have been arrayed under the banner of its chief. Two conflicts had occurred, one on the banks of the Trent and another on the Ure, between the royal and the insurgent forces. Both the record of the trial, and the errors pleaded on appeal, expressly point to the fact of banners being displayed by those in arms in the field, as a proof and attribute of open war.

Thus it might seem to many that in this state of things when the two forces, under displayed banners, had been in conflict, the *time* could not be said to be *one of peace*. But such was not the test of the time of peace by which to fix the occasion when the laws are set aside that regulate the course of justice. Though men were employing military force to resist the crown, the functions of the executive government were not paralyzed, nor were the civil authorities powerless. In fact the courts of law, that derive their jurisdiction from the crown, were then open. Before no other tribunal therefore should any prisoner have been tried, nor by any other course than that set forth in Magna Charta.

Particulars of trial by martial law.

This result of the appeal against Lancaster's attainder is the authority on which Sir M. Hale has laid down the principles already stated, and as he refers to this trial as an instance of criminal justice enforced by *martial law*, the details are valuable as exemplifying what he understood by that law. From the record it appears that the process of trial was by a court formed of the king, earls, barons, and other men of rank, without challenge by the prisoner. That the only evidence was the notoriety of the facts to the members of that court, and that no defence for the prisoner was heard by them.

It is manifest from these circumstances that superior force alone had enabled, for the time, the vanquishers to proceed unchallenged against the vanquished, by whatever course the occasion prompted.

In such a juncture when for some assumed necessity the established mode of trial is set aside, and another resorted to unsanctioned by law, no fixed rules, from the nature of the case, can be adduced as binding, nor any insisted on as prescribing a procedure for that which itself proceeds by ignoring prescription and known law.

Since it is the nature of unwritten law to grow only out of long usage, if any such could be cited to direct the course of martial law in civil matters, it would imply a long experience of government,

continued under force of such social confusion as would be nothing better than hopeless chaos.

No period of our history affords such example.

The only rule directly affecting martial law to be drawn from Lancaster's case is, that *that law* has no place whenever recourse can be had to the established courts of the crown.

The appellant had no need to question the procedure adopted at Pontefract, as one unsanctioned by martial law. But had no peace been then, by reason of the courts of justice being overawed and suppressed, the trial and punishment of Lancaster for treason and felony under that law would still have been attended by disregard of rules essential to justice, and undoubtedly binding in time of peace.

It might not be easy in times of great civil confusion to substitute an impartial tribunal for that of a jury of the prisoner's peers, guided by the experience of a judge. But the other principles held binding in peace are no less within the reach of martial law, which if able to command a prisoner's trial, must equally be able to arraign and inform him of the crime that is laid to his charge, and extend to him a hearing with the right of producing his defence. The forms and the essence of justice in these, are inseparable. Nor could it be necessary for a power having strength to enforce martial law, ever to condemn and execute a prisoner without such arraignment and means of defence, however impaired in value these rights might be before a partial and prejudiced court. Were it otherwise, example would be given of such hasty and unfair judgment that even policy should teach to avoid, lest in turn it might be used with fatal force against those that set it. Necessity, the avowed apology for such a course, proverbially knows no law, and would be like to do no justice. The conduct and fate of Lancaster himself, give the corroboration of experience to these remarks, if such were needed.

Piers de Gaveston, the Gascon minion of the king, had been captured in 1312 by the Barons at Scarborough Castle, and thence taken to Dedington in Oxfordshire with the view of permitting his interview with the king. From that place, however, he had been forcibly taken by Guy Earl of Warwick, to Warwick Castle. As the *favourite*, he was the constant object of the barons' hatred, and his destruction was resolved on. Lancaster, with the Earls of Hereford and Arundel, carried him from Warwick to Blacklow Hill, a mile north-east of that town, and there beheaded him on 1st July, without even a form of trial, on the pretence of his being an enemy to the kingdom. Such conduct of Lancaster's could not justify its use as a precedent; but the historian observes, that the manner of Lancaster's suffering was formed upon the model of his cruel treatment of Gaveston, and as soon as sentence was passed, he was taken in an ignominious manner to a hill a mile from Pontefract, and there beheaded. (*Carte*, vol. 2, p. 358.)

Besides the King and the Earl of Kent, his cousins, the two De Spensers, the king's favourites, whose banishment Lancaster had helped to procure, were members of the court that condemned him.

The younger De Spenser, only the year before (having been condemned to perpetual exile upon articles presented by the barons to parliament) had himself petitioned against that sentence on the ground that he had neither been appealed in court, nor allowed to answer before the award was made, and that the barons had no record to produce for the causes or reasons of their award; that it was contrary to Magna Charta, which provided that none should be exiled unless adjudged by their peers, and according to the law of the land (*Carte*, Book ix., p. 352.) Yet with such recent appeal to this law in his own behalf, he had no scruples, in the following year, in denying it to another.

This trial of Lancaster is cited as one by martial law. Other trials,

Rapin, l. p. 397.  
 Carte, ii., 389.  
 1 Rot. Parl. 1  
 Edw. 2nd, pt. 1,  
 m. 34.  
 Earl of March's  
 trial.  
 A.D. 1323.

Parl. 1, Edw. 3,  
 part 1, m. 3, 11.  
 A.D. 1327.

however, equally setting at nought the same principles of criminal justice, took place about the same time. These have not been ascribed to martial law. Thus in the next year (1323), Roger Mortimer, Earl of March, was brought to trial, after being taken and imprisoned as one of the rebellious barons.

The course of trial was, that he was brought before Walter de Norwich and four other judges at Westminster, pursuant to writ dated from York, 17th July, in 16th year of Edw. 2. On the 2nd of August he was charged with and condemned for having marched with banners displayed against the king's forces, and for having killed his subjects and driven his servants out of Bridgenorth, and burnt that place, and seized Gloucester and other fortresses. The sentence thereon was that he be drawn for treason, and hanged for his other felonies, which sentence was changed to perpetual imprisonment.

The record was on petition moved into parliament the same year as that of Lancaster, and both these sentences against Mortimer were there reversed, for the following errors then assigned:—

1st. That every English subject committing in time of peace any offence against the king punishable with loss of life or limb and called before the judges on that account ought to be tried fairly and allowed to answer for his offence before judgment, and that Roger had not been regularly arraigned nor permitted to answer for himself, contrary to law and custom.

2nd. That the record charged that he marched in a hostile manner against the king himself, and that this could not be said in a time of peace, nor unless the king was actually in the field with his banner displayed, nor when the king's chancellor and justices of both benches were sitting regularly to hear causes and do justice.

3rd. That in a *time of peace* when the judges were regularly sitting and the king not on a march with his banner displayed, no freeman could be condemned agreeable to Magna Charta but by the law of the land, and the judgment of his peers; and yet sentence had been passed against Roger without his peers being called together, or his being allowed to answer the indictment.

Here the same rights of trial are upheld by the reversal of the judgment, as are relied on in the appeal by Lancaster's heir.

In each appeal the time of peace is made to depend on the facts of the courts of the king being able to sit and hear trials, and of his absence from the field with troops and banners, so that by Magna Charta, Mortimer also should have been brought before his peers for the purpose of his trial, and should have been heard in his defence after being duly arraigned.

The one respect that applies the name of martial law to Lancaster's more than to March's trial, seems to be that a military force was the power under which the first took place, and before men previously in arms against their prisoner, while that of Mortimer pursued the equally illegal course of a writ convening five judges as his tribunal; in neither was the trial by the prisoners' peers, and in both the arraignment, and the right to be heard in defence, were withheld.

Yet to the victims in such trials, as to those who seek to uphold the laws, the name under which they are arbitrarily violated, is of no especial value. The two trials differ in no essential points.

Though these public decisions were founded on general public law and that declared by charter, they seem to have failed to give a sense of certain protection to the subjects of the kingdom, for on this particular head of the great charter there was again a declaratory statute in the fifth year of king Edw. 3rd, c. 9, only four years after these judgments of reversal. It was then enacted "that no man henceforth shall be attached by any accusation nor forejudged of life or limb, nor his lands, tenements, goods, nor chattels seized into the king's hands against the form of the great charter and the law of the land."

The words of this statute "*that no one shall be forejudged of life or limb against the form of the great charter*," are recited in the Petition of Right, but are there attributed to the 25 Edw. 3; when again another statute (though not using these recited words), was passed more particularly on the method of proceeding touching the rights declared by chap. 29 of Magna Charta. By chap. 4 of 25 Edw. 3, referring to that chapter of the Charter, it is declared "that from henceforth none shall be taken by *petition or suggestion* made to our lord the king, or to his council, *unless it be by indictment and presentment of good and lawful people of the same neighbourhood where such deeds be done in due manner or by proofs made by writ original at the common law*." Three years later, again a further declaratory statute on this same matter was passed, to meet the mode of trial. The 28 Edw. 3rd, c. 3, enacts:—

"That no man of what estate or condition that he be shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, *without being brought to answer by due process of law*."

Of the 25 Edw. 3, c. 4, Sir Robert Cotton observes that what in Magna Charta and the preamble of this statute is termed "by the law of the land" is by the body of this act expounded to be by process made by writ original at the common law, which is a plain interpretation of the words "law of the land" in the grand charter, and "I note that this law was made upon the commitment of divers to the Tower; no man yet knoweth for what." (*Cotton's Posthuma*, 227.)

Notwithstanding these statutes and judgments that declare and decide the rights of the subject with clearness, a review of these times which called for such frequent assertions on this head of the charter, proves how gradual was the growth in strength of statute law, and that though there were not wanting such for protection of the subjects' lives liberties and property, yet while men remained in a half-civilized state of society, they had no full and practical security against particular acts of arbitrary power.

"Blood hath been shed ere now i' the olden time,  
Ere human statute purged the gentle weal;  
Aye, and since too, murders have been performed  
Too terrible for the ear."

This desire of parliament in the 25 of Edw. 3rd, to prevent the law being put in motion against a person charged, by *mere suggestion*, and to require an *indictment* and *presentment* to be made, and again in the 28th of the same reign, to secure that none should thus be imprisoned or disinherited or put to death *without being also put to his answer*, though it refers to the process and not to the tribunal, had doubtless in view such cases as the trials of the Earls of Lancaster and March. But in the latter year the matter was more vividly recalled, by appeals and reversals of other judgments and attainders in which the gross injustice of condemning persons without trial and defence, was again displayed, although the legal tribunal had been resorted to.

Thus the record of the trial of Roger Mortimer, condemned and executed in the fourth year of Edw. 3rd, 1330, was in 1354, the 28th Edw. 3rd, brought by appeal before parliament. Its own simple narrative, as a sample of what sometimes passed for justice in those days, is here given.

It was at the parliament held at Westminster, 1330, the fourth year of Edw. 3rd, that articles were presented charging Mortimer with various acts of treason and felony, and among these one for accroaching royal power, and also by means of that power for having removed Edw. 2nd from Kenilworth to Berkeley Castle, where by him and his agents that king had been murdered. The record then proceeds, "the king charges you the earls, barons, peers of his realm, that as to these matters affecting himself chiefly, and you, and the whole people of the realm, that you do right and legal judgment to the said Roger as

25 Edw. 3, c. 4.

28 Edw. 3, c. 3.

A.D. 1330.  
Roger Mortimer's  
attainder.

Rot. Parl., vol. ii.,  
pp. 52—255.

such an one should receive, who is in fact guilty of all the above acts, as the king hears, these things being notorious and known to be true to yourselves, and the whole realm."

"At which parliament these earls, barons, and peers having examined these articles appear before the king and say by one of their number that all the matter contained in the articles were notorious and known to themselves and all the people, and especially that article relating to the death of Edward, the king's father. Whereupon they, as judges of parliament, with the king's assent, at the same parliament adjudge the said Roger, as traitor and enemy to the king and the realm, to be drawn and hung. Whereupon the earl marshal was commanded to put in execution the said judgment, and that the mayor, aldermen and sheriffs of London, the constable of the Tower, as also those who have custody of him, lend their aid to the said earl marshal to carry out the said execution—which same execution was done and performed Thursday next after the first day of parliament, being November 29th."

Its reversal.  
A.D. 1354.

The petitioner Roger, cousin to the earl so condemned, thereon assigned as error, that the earl had been executed and disinherited *without accusation*, and without being *put on his trial* and allowed to *answer*, and therefore prays that the record and judgment be reversed and made void, and thereon after deliberation had, by the king, prelates, prince, dukes, earls, and barons, it is recorded that it appears clearly that this judgment and record are erroneous and defective in every respect.

42 Edw. 3, c. 3.

Again, fourteen years later, by 42 of Edw. 3, c. 3, further protection was given against illegal process in criminal charges. On petition by the commons in parliament, "put forth to eschew the mischiefs and damages done to divers of his commons by false accusers, which oftentimes have made their accusations more for revenge and singular benefit, than for the profit of the king or of his people, which accused persons, some have been taken and sometime caused to come before the king's council by writ, and otherwise upon grievous pain against the law, it is by this statute assented and accorded for the good governance of the commons, that no man be put to answer without *presentment before justices*, or matter of record, or by due process and writ original according to the old law of the land, and if anything from henceforth be done to the contrary, it shall be void in the law and holden for error."

Besides these trials which violated the common law and great Charter and those Acts that expand and confirm the same, executions without trials were carried out by the crown and its lieutenants when in command of forces for repressing rebellion, and afterwards for punishing those engaged in it, which are equally at variance with the same law and statutes.

Many instances moreover exist when by proclamations and commissions the crown assumed to authorise direct infringement of the same rights, by resorting to martial law.

In no one of these instances was there any reason for disregarding fixed and positive laws, arising from the time being such that the peace and authority of the constituted courts of justice were not maintained.

A.D. 1327.

The case of the  
inhabitants of  
Bury.

In the case of the inhabitants of the town of Bury in Suffolk, who had assembled themselves in warlike manner on St. Luke's day, 1326, the 20th year of Edw. 2, and besieged the abbey of Bury, burnt the gates, beat and wounded the monks, bore out of the abbey all the gold, silver, ornaments, books, charters, and other writings, with the assay of their coin, stamps, and all other things appertaining to their mint, &c., &c., it is recorded that,

Stow. 228, folio.

"For the which facts the malefactors were this year (1327), by virtue of the king's commission directed to Thomas, Earl of Norfolk, marshal of England, (Thomas Bardolphe, and others,) apprehended and convicted: nineteen of them were hanged and one pressed to death."

In the "History of Edward III.'s reign by Barnes," he relates that in 1331, "the fourth year of that king, in England certain bold fellows of the realm, in mere contempt of the king's youth, or by the secret instigation of some great malecontents, began to assemble themselves in considerable bodies together, and thus they kept in woods and forests robbing and abusing all that came near them after their own pleasure, and as it is usual when impunity accompanies villany, in a short time these bands grew so numerous and formidable that they became a terror and grievance to the whole kingdom.

A.D. 1331.  
4th Edw. 3.  
Brigandage.

"Among other of their licentious practices the lord chief justice Sir Richard Willoughby going after Christmas towards Grantham, was taken by one Richard Fulvile, and by force carried into a wood hard by, where being seized by certain of these lawless fellows, he was compelled to lay down immediately ninety marks as a ransom for his life; and also to swear never to discover them. Upon this the king sent justices of 'trailebaston' to inquire into the conduct of several of the officers having civil jurisdiction, but suspected of bribery, extortion, fear or favour." "But," says the historian, "lest the law should fail of power to maintain itself, the young king takes to him some choice troops of armed men with many light horsemen well mounted, and marches forth in person to discover these enemies to government. Some parties of these audacious villains were met with by him, nor did they much decline the matter, success had made them so impudent. But majesty and virtue are more valiant than vice and rebellion, so that they are all soon worsted by the brave young king, and become an example to others, some of them being slain in skirmish, many hanged and quartered; a few beheaded, others imprisoned and put to great fines, and in fact such order taken with all, that the whole kingdom was kept in peace and quiet at home all his reign after."

It may be safely suggested that those who were then among the many hanged and quartered, and the few beheaded, underwent no trial in accordance with the principles of magna charta; but were proceeded against by summary or martial law.

A petition in 36 Edw. 3 (*Rot. Parl.* 20, A.D. 1362), points to a like illegal process, and runs thus: "As it is contained in the great charter and other statutes that no man be taken or imprisoned by special command without *indictment or other process to be made by the law* upon them as well of things done out of the forest of the king as for other things, That it would please our said Lord, to command those to be delivered that are so taken by special command against the form of the charters and statutes aforesaid." The answer is: "The King is pleased it be so, and if any man find himself grieved, that he come and make his complaint, and right shall be done unto him."

A.D. 1362.  
*Rot. Parl.*, vol. ii.  
p. 270.

The serious risings in several southern counties and in London under Wat Tyler, were put down with much difficulty. The bishop of Norwich, at the head of a force of landed proprietors, being well armed, went through Norfolk, divers knights and gentlemen joining him, seeing their bishop in armour. "The martial bishop commanded his trumpets to sound, and taking a spear in his hand, set spurs to his horse, and is carried forth upon the commons with such a courage that with swift race he gat the trench of them, and as he had been a foaming boar." John Litistar, the ring-leader, was taken. "The bishop brought him unto drawing, hanging, and heading, and so the country was in peace."

Rich. 2.  
A.D. 1381.  
Stow. 290—1.  
Wat Tyler, Jack  
Straw, and others.

William Walworth, mayor of London, with some knights, arrested Wat Tyler. The mayor, who is said to have been "a man of incomparable boldness and manhood," "without any doubting straight arrested him," when John Cavendish, an esquire of Sir John Newton, drew his sword and wounded Tyler, by which means being taken, and lodged in Bartholomew's hospital, the mayor had him beheaded in Smithfield.

"Jack Straw being taken, when at London he should, by judgement



given by the mayor, lose his head, the mayor spake openly to him thus; "John (quoth he) behold thy death is at hand beyond all doubt, and there is no way through which thou mayest hope to escape, wherefore for thy soul's health, without making any lie, tell us what you purposed among you to have done, to what end did you assemble the commons?" \* \* \* The mayor added, "thou knowest surely, O John, that the things which I demand of thee, if thou do it, the same shall redound to thy soul's health, &c." After full confession made, Jack Straw was beheaded and his head set on London bridge, by Wat Tyler's and many others.

John Wraw, sent into Essex, easily assembled a multitude of those common people. "These, according to the manner of them in London, overthrew houses and manors of great men and of lawyers, slew the students of the law, and catching Sir John Cavendish, a justice of the realm, some say, lord chief justice, beheaded him, and set his head on the pillory in the town of Bury. In other parts they took in hand to behead all men of law, as well apprentices as utter barristers and old justices, with all the jurors."

When order was restored by the king's commission sent into the counties, it did much comfort the faithful subjects, and as a mark of returning confidence, Stow remarks, "Lawyers now durst come forth of their dens, and those which before fled from the tyranny of the time, looked for justice to be done."

These deaths under military power inflicted on prisoners without civil form of trial, were jealously noted by parliament in 7th Rich. 2, and required to be sanctioned by their authority before any legal consequences, under the circumstances, could follow. In the session of 1383 the commons petition the king, that "whereas in the insurrections in the several counties of Essex, Kent, Cambridge and Huntingdon in the fourth year of the king which were treasonably and against allegiance raised, as is well known to your highness and the whole realm, of which evildoers in those counties some were captains and leaders in raising the people of the kingdom to overthrow the king and gentry of the realm, viz., Walter Tyler of Kent, Jack Straw in Essex, John Hanchach in Cambridge, Robert Phippe in Huntingdon, who were attainted *not by the common course and process of law*, but taken in the act of their treasons, *were hastily beheaded* by your officers, to avoid the rescue of those captains by their adherents, inasmuch as a better resistance to them (by the discretion of those gentlemen) could not then be made, for the safety of the sovereign and the realm: so that the said Walter, Jack Straw, John Hanchach, Robert Phippe, be adjudged and declared attainted as rebels and felons of the king contrary to their allegiance, as if in the first instance they had been attainted during their lives, *by appeal, indictment, and other process of law*, inasmuch as their heirs seek their lands and tenements as if they had died in allegiance.

The reply to this is that those then put to death during the insurrection be held for convicted felons.

On the abdication by and acceptance from Richard 2nd of his crown, articles before parliament were drawn, in which the several heads of his misgovernment are brought forward. By the 44th head it is stated,

"*Item*.—Though it had been declared by statute and ordinance, and since confirmed, that no freeman should be arrested, &c., nor be by any means destroyed, nor should the king pass upon him, nor before any other court, except by the lawful verdict of his peers, or by the law of the land, yet by the will, command, and ordinance of the said king, very many of the lieges falsely accused for that they had uttered either in public or private, that which might redound to the abuse, scandal, or disgrace of the king's person, had been taken and imprisoned, and brought before the constable and marshal of England in their military court. In which same court these lieges were accused, were not admitted to make other answer than by pleading that they

7th Rich. 2.  
A.D. 1383—4.  
Rot. Parl. vol. iii.  
p. 175.

Hen. 4.  
A.D. 1399.  
Rot. Parl., vol. iii.  
p. 420.

were not guilty, and would defend and justify themselves by their bodies and not otherwise; notwithstanding that their accusers who brought them into appeal, were strong and sound youths, and the accused were old, weak, maimed, or infirm; whence not only the destruction of the lords and great of the realm, but of every member of the community of the same realm, might ensue in like manner."

So again in the parliament of 1400 it is decreed that the Earls of Kent, Salisbury, Sir Thomas Despenser, and Ralph Lumley, who had been taken in rebellion against the king by his lieges, and by them beheaded, that they should be adjudged traitors and forfeit lands and tenements together with goods and chattels, notwithstanding they were put to death upon levying war, *without process of law*.

Rot. Parl., vol. iii. p. 459.  
A.D. 1400.  
Attainder of Kent, Salisbury, Lumley, and Despenser.

A story, long received, if founded on fact, shows how a merchant's mirth led to his undoing, when his harmless humour was made to point a moral on the dangers of jesting.

A.D. 1461.  
March 12.  
Fox.  
Stow.  
Case of Walter Walker, grocer.

It is recorded by Fox in his "Acts and Monuments of the Church," that in 1461 Edward 4th did, what Fox says is not to be forgotten, "that one Burdet, a merchant, dwelling in Cheapside, at the sign of the 'Crown,' which is now" (he adds) "the sign of the 'Flower-de-luce,' merrily speaking of his son said that he would make him inheritor of the crown, meaning indeed his own house. For the which words King Edward, causing them to be misconstrued, and interpreted as though he had meant the 'crown of the realm,' within less space than four hours he was apprehended, judged, drawn and quartered in Cheapside. (*Fox, Acts and Monuments of Church*, vol. i. p. 825, folio.)

This brisk instance of regal repartee is at once authority and warning that jesting with crowned heads, though capital, is no joke. This merchant is, by Stow, named Walter Walker, and his trade a grocer's. It was also suggested that he was a zealous Lancastrian, but even so, it could give the crown no right of quartering him upon his own premises.

Stow, 415.  
Habington, p. 431.

In a like manner Edmund of Langley speaks of his nephew Richard 2, as prompt in retort,

*Northumberland.* Your Grace mistakes me; only to be brief,  
Left I his title out.

Rich. II., Act 3,  
Scene 3.

*York.* The time hath been,  
Would you have been so brief with him, he would  
Have been so brief with you, to shorten you,  
For taking so the head, your whole head's length.

In Edward 4th's reign trials before the court of the constable and marshal took place according to martial law.

Stow chronicles "that many men were arrested and treason surmised against them, many of them were put to death, and others escaped for great sums of money; amongst the which Sir T. Cooke, Sir John Plomar, Humphrey Heyford, and other aldermen of London, brought and charged with treason and quit, notwithstanding lost their goods to the king the value of 4000 marks or more."

A.D. 1467.  
Edw. 4.

When Thomas the bastard of Fauconbridge, with a riotous company of shipmen and others of Essex and Kent, came to London, "they were denied passage through the city, and he stred the gates, won the bulwarks at Aldgate, and entered the city; but the citizens slew such as entered, and causing the others to fly, pursued them as far as Blackwall, slaying many."

Stow, A.D. 1471.

"King Edward rode towards Kent, where he caused inquiry to be made of the foresaid riotous persons, hanged the rich by the purse, (some 200 marks, some 200*l.*, some more some less,) and the other by the necks. The mayor of Canterbury with others were hanged, quartered, and beheaded there."

"There was in the year 1497 a new commotion begun by the Cornishmen, for the payment of the subsidy granted at the last parliament.

A.D. 1497.  
Stow, 479.  
12 Hen. 7

Cornishmen  
rebels.

Of these people the heads were called Thomas Flamoke, a gentleman learned in the law, and Michael Joseph, a blacksmith, or horse farrier of Bodmin, men of stout stomachs. Flamoke and Joseph exhorted the common people to put on harness and to follow them in the quarrel." These were joined by James Twitchet, lord Audley, and they marched up by Salisbury and into Kent, and encamped on Blackheath. "There being surrounded by the king's forces, there were slain of them about 300, and taken of them about 1500. There was given to them that took them their goods; amongst them the blacksmith, and others their captains, were put to death. Flamoke and Joseph the blacksmith were drawn, headed, and quartered at Tyburn, and their heads and quarters set up at London and other places."

A.D. 1536.  
Hen. 8.  
Lincolnshire  
insurgents.

The suppression of monasteries and confiscation of abbey lands spread discontent amongst those who thereby lost their means of living.

This was apparent in 1536 by resistance made to the government when levying the fifteenth in Lincolnshire, granted by parliament. Dr. Mackrell, the prior of Barling, under the style of Captain Cobler, headed a force of 20,000 men, which was dispersed in October.

Stow, 573, folio.  
Butcher of Windsor's fate.

"The 9th of October a priest and a butcher were hanged at Windsor by martial law for words spoken in behalf of the Lincolnshire men, the butcher wished the good fellows (as he termed them) in Lincolnshire to have the flesh on his stall, rather than to sell it at such price as he was offered. The priest, standing by, likewise wished them to have it, for he said they had need of it. Also James Mallet, doctor of law, late chaplain to Queen Katherine, for like words was executed at Chelmsford in Essex."

Burnet,  
Hist. of Church  
Reformation,  
part 1, lib. 3.  
Stow.  
Rising in the  
north.  
A.D. 1537.  
Carte.

The Earl Marshal, Thomas Duke of Norfolk, held a court martial for the trial of the Lincolnshire rebels, anno 1536. When the rebels heard of his forces, they desired pardon, and broke up their army and departed home, but their captains were apprehended and executed.

In the next year, however, a force of 8000 men, under Musgrave and Tilby, two gentlemen in Cumberland, attacked Carlisle, but were defeated by troops under the Duke of Norfolk. Tilby, and some officers, with seventy-four other prisoners, were hanged by martial law on the walls of Carlisle by the duke's authority, who is described as having, under the royal banner, executed martial law wherever he saw it requisite. (*Carte*.)

Lord Cherbury's  
Life of Henry 8.

Lord Herbert of Cherbury, in his "Life of Henry VIII.," narrates a circumstance touching this same time, in relation to the suppressed monasteries, "that the dispossessed and discontented monks everywhere made petitions to Aske for remedy, who, I find," says the biographer, "also established them in divers places, wishing them to pray for the king, and to take up victuals of the farmers of the said monasteries upon bill till their suit were granted."

"And because now divers monks in those parts were restored to their monasteries by the rebels (as I find particularly those of Sally, Whally, Norton, and Hexam), Henry commanded them to be taken out and martial law to be used against them."

A.D. 1537.  
Stow, 574, folio.

On 10th March, 1537, these persons appear to have thus suffered: John Paslow, bachelor of Divinity, twenty-fifth abbot of the abbey of Whalley in Lincolnshire, and John Eastgate, a monk of the same house. Three days later, William Haydocke, another monk of that house, was hanged. About the same time the abbot of Sawley, in Lancashire, with one Astbebey, a monk of Gervaux, were executed. Robert Hops, abbot of Woburn, in Bedfordshire, with the prior of the same house, and the parson of Puddington, executed at Woburn.

A.D. 1540.  
Edw. 6.  
Rising in the  
west.

Two causes, the dearth of food and lack of work, wrought, in 1549, to render dangerous the discontent resulting from religious changes. The lands held once by abbeyes, but then in the hands of the grantees of the crown, had undergone a change of cultivation from tillage to pasturage; rents had been raised by the new landlords, to meet which,

sheep for supply of wool were found more profitable than grain for the corn market. By this change the supply of bread was diminished and the price increased, while the further enclosure of lands caused a loss of open commons; this new system decreased the demand for labour on the land, fewer hands being needed to tend the flocks than till the ground.

Insurrections took place in the West, where Lord Russell, lord privy seal, had command, and went down to suppress them. They extended through the shires of Somerset, Gloucester, Wilts, Hants, Sussex, Surrey, and Worcester. The historian, in his memorials, mentions "that preachers were licensed to preach to and appease the malcontents, but also that the king and council used another means to break and disperse these hurly burlies;—for there was now a sort of lewd idle fellows, the most part whereof had neither place to inhabit nor sought any stay to live by, persons many of them condemned of felony or prison-breakers, run from the wars, and sea rovers, departed from the king's garrisons and loiterers, and further that by stirring up rumours, and raising up tales and imaginary news whereby to stir and gather together the king's subjects, such lewd ruffians and unruly vagabonds became ringleaders and masters of the king's people, seeking to spoil, rob, and ravin where or whom they listed or might, &c." Strype, Memor., B. 1, c. xxi.

Sir William Paget's advice to the Protector Somerset to meet this danger was to go himself "with certain forces, beginning in Berkshire, and that the chief justices, with some of the judges, should resort, with commission of oyer and terminer, to the town next to the place where the protector should remain. That there should also be certain justices of the peace of the same shire attending, to whom he should give order to attach him and him, to the number of twenty or thirty, of the rankest knaves of the shire, and to hang six of the ripest of them in sundry places; the rest to remain in prison—to send some of the doers away from their wives to the north or to Boulogne to be soldiers or pioneers;" (and so on). Sir W. Paget's letter.  
Strype, Mem., supra.

Proclamations were issued, one for confiscating the property of such as did not yield themselves in so many days to Lord Russell, the king's lieutenant in those parts. Another on July 16th, prohibiting any of the king's subjects "that neither by drum, tabret, pipe, or any other instrument, striking or sounding bell or bells, ringing, opening, crying, posting, riding, running, or by any news, rumours, or tales, divulging or spreading, or by any other device or token whatsoever, to call together or muster any number of people; either to pluck down any hedge, pale, fence, wall, or any manner of enclosures, or to hunt, waste, spoil, desolate, or deface any park, chase, warren, house, lodge, pond, waters, or do any other unlawful act which is forbidden, or to redress any thing which should or might be by the king's majesty's commission reformed, redressed, or amended. And that upon pain of death presently to be executed by the authority and order of law martial; wherein no delay or deferring of time should be permitted as in other causes, being indeed of less importance. And therefore the king commanded all sheriffs, justices, ministers, and officers, upon knowledge of any offender against the tenor of this proclamation, forthwith with all expedition, and with such power as should be requisite, to apprehend and attach the same offenders, and them to commit to safe gaol. And thereupon indelayedly to certify to the lord protector and the council, to the intent most speedy order may be given for the execution of the said offenders." (Strype, Memor. B. 1, Ch. xxi.) A.D. 1549.  
Proclamation.

The same year Robert Ket (or Keate), a tanner, led some insurgents in Norfolk, and at first defeated the Marquis of Nottingham, sent to disperse them; but they finally were quelled by Earl of Warwick, at Stow the head of the gentry of Norfolk, Suffolk, and Essex, "who having slain about 5000 of the rebels, returned when he had put to execution divers of the rebels in divers places about Norwich."

Styrye Memor.,  
B. 1, ch. 21.  
The bailiff of  
Romford's fate.

Upon occasion of this tumult, the annalist tells that "somewhat a severe execution happened to the bailiff of Rumford in Essex, who chancing to come to London just upon the noise of it, when one, Sir Stephen, a curate of Cree Church meeting him, and asking him what news out of the country, the other replied that they were up in arms in Norfolk, Suffolk, and Essex; yet adding that 'thanks to God they were all quiet about their parts.' A suspicion these words of his begat that he was privy to these mutinies. Sir Stephen, a zealous man, informs against him, and immediately by a court martial he was tried and condemned to be hanged; and so he was, upon a gibbet by the well within Aldgate, which was afterwards turned to a pump there still remaining. Though upon the ladder he professed he was no farther guilty than those bare words could make him." (*Styrye, Memor., B. 1, Ch. xxi.*)

Somerset's letter.

The Protector, in a letter written in September, 1549, shows how the proclamation of martial law had been put in force. "That the lord privy seal by his politic and wise handling of the matter after a slaughter of more than a thousand of the rebels, and execution of some of the ringleaders, he hath, thanks be to God, so honorably achieved and finished, as not only the country remaineth presently in good order, but also the multitude so repent their former detestable and naughty doings, as they abhor to hear themselves spoken of." (*Cott. Libr. Galba. B. 12.*)

Stow.

Stow states that "John, Lord Russell, lord privy seal, with a number of soldiers, entered the city of Exeter the 5th of August, slew and took prisoners of the rebels more than 4000, and after hanged divers of them in the town and country about."

"Divers persons were apprehended as aiders of the foresaid rebels, of the which one was hanged by martial law within Aldgate, and another at the bridge foot toward Southwark, both on Mary Magdalen's day."

Among the instructions to be carried out there is—

"The memorial for the Lord Russell, lord privy seal for the purposes ensuing."

It contains the following directions amongst other matters—

"Whereas the king's Majesty, by the advice of us the lord protector and council, hath thought mete to appoint the said Lord Russell to reside for a time in the west parts of his Majesty's realm, &c."

"But if the people be out of frame, and not in such order of obedience as were convenient. . . . His highness pleasure is that the said Lord Russell, by force of his Majesty's commission to him addressed for this purpose, assemble such numbers of men within the limits of his commission as may be able, to repress the obstinate and wilful doings, bring them to the knowledge of their bounden duties, and be also an example to others to attempt the like. . . . And because we know that sundry ill and seditious persons, for the better achieving of their devilish purpose, have many times used to spread abroad such lewd and untrue brutes and rumours as they imagine may best set forth their naughty purposes, the said Lord Russell (who may well assure himself to be undelayedly advised from us of all occurrences of importance) shall endeavour himself, from time to time, to search for the authors and spreaders of the said rumours, causing them to be apprehended and committed to ward, and after further punished according to their deservings."

Armed with these extraordinary powers, Lord Russell wrote in the following terms "to the mayor of Exeter, and his brethren of the city of Exeter, greeting:"—"Whereas for lack of good orders amongst such as ought to rule the commons, as well in these as in other parts of the realm, there have grown of late such commotions and rebellions as the like have not been heard of, insomuch that the rudest of the people, contempting their superiors, have attained so unnatural liberty, that at length their pride and ignorance have provoked their

A.D. 1549.  
June 24th.  
State papers,  
domestic series,  
vol. vii., Edw. 6.  
Instructions to  
Lord Russell.

August, 1549.  
Lord Russell's  
letter to mayor of  
Exeter.

natural sovereign lord and king to use his sword of justice against them. Forasmuch as it is none the more requisite to look henceforth substantially to the good governance of every quarter of the commonwealth of the whole, I therefore have thought good in the king's majesty's name to charge and command you immediately to peruse what men within the precincts of your authority are metest for the stay of such inconveniences, appointing to every man to know whom he shall follow, and you shall order them in such sort as no man be unready to do his duty when occasion shall require, like as on the other side you must foresee that no man be so hardy upon pain of death to stir or to meddle in these cases, unless he be thereunto specially appointed, &c."

He then appoints gentlemen of the neighbourhood to aid the corporation, "being your neighbours and gentlemen of such forwardness towards this service, as in case of need would I doubt not so further you with their good counsel, and so strengthen you also with their powers that you shall at all times be liable much the better to resist the multitude if any such ignorant violence should happen to be offered again. Wherefore like as I have appointed them to be assistants unto you, so I require and pray you to use their advice and help whensoever the case shall so require, charging and commanding in the king's majesty's name all manner of men whatsoever they be within your liberties, upon pain of death, to obey and follow all such orders as ye, by virtue of this commission, shall take in this behalf."

"A commission, in the month of March, went to John, Earl of Bedford, William, Earl of Pembroke, the Lord Darcy, Sir William Petre, Sir J. Baker, Sir Philip Hoby, Sir Robert Bowes, Sir Thomas Wroth, Edward Griffyth, John Gosnold, or to ten, nine, eight, seven, or six of them, to put in execution all such martial laws as shall be thought by their discretions most necessary to be executed, and instructions given to them in nine articles."

The articles for their execution, direct them amongst other things, "That the said commissioners shall consider from time to time what penal laws and proclamations be most necessary to be executed for the common weal. And shall cause due inquisition to be made of the observation of them in the countries where and in such manner as they shall see most needful and expedient, whereupon they shall cause such informations of the breach of such laws and proclamations as have good appearance of truth to be furthered in such ordinary courts or places, as by the same laws and proclamations is appointed, that they may both speedily and justly come to the execution, and the examples of the execution of the law may profit. And in this part they shall begin with the greater offender first."

*Item.*—"They shall also have regard and respect to the justices of peace how they execute their offices in such things as by the laws and proclamations they have authority and charge, to the intent that such as shall be found continually negligent or otherwise unfruitful may be known, and they amended, or others placed, that the expectation of service to be done be not frustrate."

On Shrove Tuesday, 6th February, A.D. 1554, Sir Thomas Wyatt removed out of Southwark toward Kingston bridge. The same day, in the afternoon, were two men hanged on a gibbet in Paul's churchyard by martial law, the one John Egerly, servant to the Duke of Suffolk and late sheriff of Leicester, the other a baker, one of the white coats sent out of the city against Wyatt.

The 14 and 15 February about the number of fifty of Wyatt's faction were hanged on twenty pair of gallows made for that purpose in divers places about the city.

The 18th February, Alexander Bret, one of the captains of the Londoners that fled to Wyatt, and twenty-two persons more of the Kentish men, were delivered to the sheriff of Kent to be executed in divers places in Kent.

A.D. 1552.  
Strype. Mem.  
B. 11, c. xxix.

State Papers.  
Domestic series,  
vol. xiv. Edw. 6.  
No. 17.

Wyatt's rebellion.  
A.D. 1554.  
Stow, 620.  
Mary.

Stow, c22.

State papers,  
domestic series,  
vol. iii.  
Mary.

Sir Robert Southwell wrote from Merewood in Kent, on 24th February, to the council, addressed "to the right honourable and my very good lords of the queen's Majesty's council—"

"It may like your lordships to be advertised that yesterday Dayes one proctor schoolmaster of Tonbridge brought unto me and Mr. Clarke a proclamation &c.—It is but short, but if it shall please you to give it the reading you shall find good gere in it. . . . It may like you further to be advertised, that after my going from Rochester I wrote to the mayor of Canterbury to assist my undersheriff in executing some of the prisoners, who, accompanied with a hundred of the honestest men in the town, being horsed, met him by the way, and fifty of them rid through with him to Dover. . . . The mayor of Dover would learn of mine undersheriff his authority to execute any there, the bailiff nevertheless was very serviceable, as mine undersheriff informs me. . . . I doubt not but your lordships will take order for such as be fled or otherways hidden, that were forty, shall take no advantage thereby. And thus beseeching your lordships to bear with my fond letters, that am bold to use my folly, I take my leave of you for this time. From Merewood, this 24th of February, 1553."

A.D. 1558.  
State papers,  
domestic series,  
vol. xii.  
Mary.

On 26th January, 1558, a letter addressed and directed to "our trusty and right well-beloved counsellor, Sir Thomas Cheney, knight of our order, treasurer of our household, and warden of our five ports," runs thus:—

"BY THE QUEEN.

Mary's letter to  
Sir T. Cheney.

"Trusty and right well-beloved, we greet you well. Letting you wit that we have seen your letters addressed unto our council, of the 25th of the present, together with a letter and certain depositions inclosed, sent to you from the mayor of our city of Canterbury, touching certain traitorous and seditious words, spoken by one Robert Cockerell and Francis Borton, for answer unto which part of your said letters we have thought good to signify unto you, that as concerning the said Cockerell to the intent that he may for his own part receive punishment according to his deserts, and the same be also a terror unto others to beware of the like offence, we will you shall forthwith proceed against him by order of the martial law, without any longer keeping him."

But as to the other, this letter proceeds,

"and touching Francis Borton our pleasure is, that if the words contained in the depositions be duly proved against him, you shall then cause him to be set in the pillory openly some market-day in our said city of Canterbury, with papers upon his head whereupon may be written to this effect, 'that his punishment is for naughty and seditious words used against such as put in trust,' and thereupon to dismiss for this time. Given under our signet at our Palace of Westminster, the January, the fourth and fifth years of our reign."

A.D. 1558.

In the same year, being the last of Queen Mary, June 6th, she was induced, by the conduct of the exiled Protestants, to issue a proclamation threatening with punishment under martial law any who aided the circulation of their writings.

Styrye, vol. iii.  
p. 460, folio.

One example of these works is by Christopher Goodman, who in exile at Geneva issued a book printed there by John Crispin in that year, which, in a preface by Whittingham, encouraged the taking arms against and dethroning Queen Mary, for the reason amongst others, "that it is not lawful for women to reign."

Of some stanzas by William Kethe at the end of the book, this is one:—

"Whom fury long fostered by suff'rance and awe,  
Have right rule subverted and made will their law,  
Whose pride how to temper this truth will thee tell,  
So as thou resist may'st, and yet not rebel."

The second of these stiff lines seems to be proved by the proclamation these works provoked.

“BY THE KING AND QUEEN.

“Whereas divers books filled with heresy, sedition, and treason, have of late and be daily brought into this realm out of foreign countries and places beyond the seas, and some also covertly printed within this realm, and cast abroad in sundry parts thereof, whereby not only God is dishonoured, but also encouragement is given to disobey lawful princes and governors. The king and queen’s majesty for redress hereof do by this their present proclamation declare and publish to all their subjects, that whosoever shall after the proclaiming hereof be found to have any of the said wicked and seditious books, or finding them doth not forthwith burn the same without shewing or reading the same to any other person, shall in that case be reputed and taken for a rebel, and shall without delay be executed for that offence according to the order of martial law. Given at our manor of St. James, the 6th June.”

Proclamation.  
Strype, Memor.,  
vol. iii. folio.

The meaning conveyed by martial law to those in exile at this time, is expressed by Alexander Noel, one of them, who shortly after became dean of St. Paul’s. “This proclamation,” says he, “assigned the penalty of cruel and sudden death by law martial, without examination, question, verdict, and judgment, not only unusual in this realm, but more hasty and cruel than is used for any murderous rebels or traitors.” (*Strype, Mem.* v. 3, p. 459, folio.)

An example of criminal justice by the council, and contrary to the charter, is mentioned as taking place 14th March, 1559, and though this is not ascribed to martial law, the recent resort to that law must have made this summary example less startling. “One Duncomb, gentleman, (says the annalist,) and his company had committed a great robbery down in Bedfordshire. They were examined before the council. After being found guilty they were carried down thither by the sheriff of the county and were hanged in a place where the said Duncomb might see two or three lordships that should have been his, had he behaved himself as he ought.”

Strype, Ann.,  
vol. v. c. 15.  
A.D. 1559.  
Elizabeth.  
Duncomb’s case.

The narrator placidly adds his moral thus (“which stirred him no doubt to repentance, but alas! too late.”) *Strype, Annal.* v. 1, p. 198, folio.)

Yet there had been a petition against this manner of process in 42 Edw. 3, cited by Sir Robert Cotton (*Posthuma*, p. 230, ed. 1679), where he says the petition and answer (which make the act) *Rot. Parl.* n. 12 (A.D. 1368), are set down. The petition—*Item*. “Because that many of the commons are hurt and destroyed by false accusers who make their accusations, more for their revenge and particular gain than for the profit of the king or his people; and those that are accused by them, some have been taken, and others are made to come before the king’s council by writ or other command of the king, upon grievous pains contrary to the law. That it would please our lord the king and his good council, for the just government of his people, to ordain that if hereafter any accuser purpose any matter for the profit of the king, that the matter be sent to the justices of the one Bench or the other, or the assizes to be enquired and determined according to the law; and if it concern the accuser or party, that he take his suit at the common law, and that no man be put to answer without presentment before justices or matter of record, or by due process and original writ, according to the ancient law of the land; and if anything henceforward be done to the contrary that it be void in law and held for error.”

Cotton’s Posthuma.

The king’s answer is this:—

“Because that this article is an article of the Grand Charter, the king will that this be done as the petition doth demand.”



Rebellion in the north.  
A.D. 1569.  
Stow, 664, folio.

When the rebellion in the north raised by the earls of Northumberland and Cumberland was quelled by the queen's lieutenant, Thomas, earl of Sussex, then president of the north, "his force having been certified to the enemy to be four times greater than it was, the rebellious multitude were scattered and taken in every corner, many of them for example were executed by martial law, but the greater number were pardoned."

A.D. 1570.  
Executions.

"On 4th and 5th January following did suffer at Durham to the number of threescore and six, constables and others, among whom an alderman of the town, and a priest, were the most notable. And" adds Stow, "Sir George Bowes, Marshal, finding many to be faulters in the foresaid rebellion, did see them executed in every market town, and other places betwixt Newcastle and Witherby, and about sixty miles in length and forty miles in breadth, as himself reported unto me."

Camden, Eliz.

Others were, says Camden, after a few months at London and elsewhere, as it is expressed by him, "ad terrorem suspensi."

Strype, Ann.,  
vol. ii.  
A.D. 1573.  
Burchet the  
puritan.

One Peter Burchet, gentleman of the Middle Temple, a fanatical puritan, professed to hold lawful the killing of those who opposed the bringing in of his model of discipline, and in 1573, he assassinated Captain Hawkins of the royal navy, mistaking him for Mr. (Sir C.) Hatton.

On 28th October of that year, (this act suggesting so much danger to the lives of the queen and her supporters,) she commanded Burchet to be executed forthwith by martial law.

Strype, Ann.,  
vol. ii., 288.

A commission for that purpose was drawn for her signature, and is said to have been suggested by Mary's treatment of those who acted with Wyatt in the rebellion of 1554. Upon the remonstrance of the Earl of Sussex, and of the lord treasurer and others against this step, she was induced to abandon her intention. (*Strype, Ann.* vol. 2, p. 288, folio.)

A.D. 1588.  
Spanish Armada.

The public alarm in 1588 at the formidable preparation and objects of the Spanish Armada, led to the issuing of a proclamation on the 1st July at her Highness's manor of Greenwich, under the great seal. It refers to the bringing in and distribution of books from the see of Rome, and the wicked enterprises of the Papists against the queen's life and kingdom. After reference to many sources of danger, and to the distributors of those books, it proceeds thus:—"And her Majesty's further pleasure and express commandment was that if any such person should wittingly and willingly offend in or touching the bringing in, dispersing, uttering, or malicious having or keeping of any such bull or of a transcript or copy thereof, or of any the said libels, books, and pamphlets, contrary to this her Majesty's proclamation, that every such offender should with all severity be proceeded against and punished according to the martial law, by her Majesty's lieutenants, or their deputies, by direction from the same lieutenants in that behalf, within the several limits and precincts of their commissions of lieutenantancy, and should suffer such pains and penalties in that behalf as by the said lieutenants or their deputies, by such direction as is aforesaid, or any of them within their said limits and precincts, should be inflicted upon them, and that thereupon the goods and chattels of every such offender should be confiscated and forfeited to her Majesty. And for the better execution of this present proclamation her Majesty did not only grant and commit full power and authority to all and every her lieutenants and their deputies having such direction as was aforesaid, but hereby also straightly charged and commanded them and every of them to proceed against the offenders aforesaid with all diligence and severity according to the said martial law. And further granted by these presents that none of her said lieutenants or their deputies be anywise impeached in body, lands, or goods at any time hereafter for anything to be done or executed in the punishment of any such offender according to the said

Proclamation.  
Strype, Ann.,  
vol. iii. p. 570,  
folio.

martial law and the tenor of this her Highness' proclamation, any law or statute to the contrary in anywise notwithstanding. And for the better discovery of the said offences and the speedy apprehension of such traitorous, seditious, and wicked persons as should wilfully offend against her highness proclamation, her highness straitly charged and commanded as well all her lieutenants, &c., them to apprehend and put in safe keeping, that they might be speedily proceeded against for the said offences according to the martial law as is aforesaid." (*Strype, Ann. v. 3, p. 570, folio.*)

In a commission addressed to her trusty and well-beloved servant, Sir Thomas Wylford, knight, the Queen, in 1595, commits to him power by martial law to suppress that which seems to have given disquiet to the capital, and is described in the commission as "sundry great unlawful assemblies that of late had been, of a number of base people in riotous sort both in the city of London and in the suburbs of the same, and in some other parts near to the city." For the suppression of these it observes, "there had been some proceedings in ordinary manner by the mayor of the city, and sundry offenders had been committed to several prisons." This exercise of the regular course of law was thought to have been unequal to meet the case, for it is stated "that the insolency of the kind of desperate offenders is such that they care not for the ordinary punishment by imprisonment and other severe punishment inflicted on them," Elizabeth therefore states, "that she finds it necessary to have some such notable rebellious and incorrigible persons to be speedily suppressed by execution to death according to the justice of her martial law," and therefore she proceeds, "we have made choice of you upon special trust of your wisdom, discretion, and other qualities, mete for this purpose, to be our provost marshal, giving you authority, and so we command you upon signification to you by our justices of the peace in our city of London, or of any place near to our said city in our counties of Middlesex, Surrey, Kent, and Essex, of such notable, rebellious, and incorrigible offenders worthily to be speedily executed by martial law, to attach and take the same persons and in the presence of the said justices according to justice of martial law, to execute them upon the gallows or gibbet openly or near to such place where the said rebellious and incorrigible offenders shall be found to have committed the said great offences."

"And furthermore we authorize you to repair with a convenient company into all common highways near to our said city where you shall understand that any vagrant persons do haunt, and calling to your assistance some convenient member of our justices and constables abiding about the said places, to apprehend all such vagrant and suspected persons and them to deliver to the said justices by them to be committed and examined of the causes of their wandering, and finding them notoriously culpable in the unlawful manner of life as incorrigible and so certified to you by the said justices, you shall by our law martial cause to be executed upon the gallows or gibbet some of them that are so found most notorious and incorrigible offenders, and some such also of them as have manifestly broken the peace sithence they have been judged and condemned to death by former offences and have had our pardon for the same."

"And we further command as well the mayors, sheriffs, and all other officers within our said city as other our justices of peace and common officers in any place near to our said city to be aiding and assisting to you in the execution of the premises as they will answer thereto at their peril, and of your doings to advertize our counsel from time to time, and this our authority committed to you to continue in force until we or our counsel shall signify unto you our pleasure to determine the same, and these presents shall be your warrant and discharge in this behalf. In witness whereof, &c.

"Witness ourselves at Westminster,

18th July."

Commission.

A. D. 1595.

July 18.

Rymer, xvi. 279.

The above commission is headed:—"De Colluvie hominum tumultuante reprimandâ:."—(*Rymer*, xvi. 279.)

James I.  
A.D. 1607.  
Stow, 890.

In the year 1607, "about the middle of May, a great number of common persons suddenly assembled themselves in Northamptonshire, and then others of like nature assembled themselves in Warwickshire, and then in Leicestershire, they violently cut and brake down hedges, filled up ditches, and laid open all such inclosures of commons and other grounds which of ancient times had been open, and employed to tillage. And the 28th June the king made proclamation signifying his great unwillingness to have proceeded against them either by martial law or civil justice, if lenity or gentle admonition might any ways have prevailed with them."

Proclamation.

State Papers,  
Domestic Series,  
vol. xxvii.  
Book of Procla-  
mations, im-  
printed at London  
by Robert Barker.  
Printed 1609.

This proclamation ran in part thus—

"A proclamation signifying his Majesty's pleasure as well for suppressing of riotous assemblies about inclosures as for reformation of depopulations.

"It is a thing notorious that many of the meanest sort of our people in divers parts of our kingdom, either by secret combination, wrought by some wicked instruments, or by ill example of the first beginners, have presumed lately to assemble themselves riotously in multitudes, and being armed with sundry weapons, have laid open in a forcible manner a great quantity of several men's possessions, some newly enclosed, and others of longer continuance, making their pretence that some towns have been depopulated, and divers families undone by means of such enclosures. In which seditious courses they have persisted, not only after many prohibitions by our ministers in the several counties, but after particular proclamations published by our royal authority, and which is more, when so many means of lenity and gentleness were offered to reclaim them, as no prince would have used, but such a one as was both confident in the loyal affections of his subjects in general, and compassionate towards the simplicity of such offenders. Many of them stood out most obstinately and in open field, rebelliously resisted such forces as in our name and by our authority came to repress them, whereupon ensued by necessity in the end that some blood was drawn, as well by martial execution, as by civil justice," &c. Having then pointed out how the interest of these grievances more affected his princely consideration, King James proceeds. "We do accordingly charge and command all our lieutenants, deputy lieutenants, sheriffs, justices of the peace, and all other magistrates of justice under us, &c., to do and employ their uttermost endeavours and forces for keeping our subjects in peace and obedience, for prevention of all such riotous and rebellious assemblies, and destroying them (if any do remain or shall happen to arise) by force of arms and by execution (even to present death) of such as shall make resistance," &c.

"Given at our manor of Greenwich, 28th June, 5th year of our reign," &c. A.D. 1607.

A.D. 1616.  
March.  
Stow.

Shrove Tuesday, 4th March, many disordered persons of sundry kinds, amongst whom were very many boys and lads, assembled in Lincoln's Inn Fields, where in riotous sort they head down walls and windows of many victualling houses, &c., and despitefully used and resisted the sheriffs of London, &c. Whereupon the lords of the council, by the king's appointment, ordained divers of the chief justices of Middlesex to be provost marshals, and to execute martial law if the like occasion should happen.

Commissions.  
A.D. 1625.  
Charles I.

Commissions for executing martial law were issued by Charles 1st on 28th Dec. 1625, and the 4th Oct. in the next year, with several others about the same time. These are what the Petition of Right dealt with in 1628. The experience of the disorders committed by the army under Count Mansfelt sent by James 1st to Calais, is said to have prompted these commissions, in order to meet similar circumstances. The commission, dated Dec. 1625, is addressed by

Devon and Corn-  
wall.

"Charles by the Grace of God, to our right well beloved cousin Edward Viscount Wimbledon, Lord Martial of our army," (and to twenty-four others, baronets, knights and gentlemen). Shortly after the funeral of James 1st on 7th May, a force of eight thousand men, sent to Plymouth for embarkation to Spain, had committed great disorders in their march to the West. The commission recites that on the return of the fleet none of the soldiers employed in it should be disbanded, but would have to be billeted in and about Plymouth, and in the counties of Devon and Cornwall; and to the end that disturbances of the peace might be timely prevented, it proceeds thus,—

"We have of the special trust and confidence we have reposed in your approved wisdoms and fidelities, appointed you to be our commissioners, and by these presents do give unto you, or any three or more of you, full power and authority in all places within our counties of Devon and Cornwall and either of them, as well within the said town of Plymouth or any other town, liberty, or place as without, within our said counties of Devon and Cornwall or either of them, to proceed according to the justice of martial law against such soldiers or other dissolute persons joining with them or any of them, as during such time that any of our troops or companies of soldiers shall remain or abide thereabouts and not be transported thence, shall within any the places and precincts aforesaid at any time after the publication of this our commission commit any robberies, felonies, mutinies, or other outrages or misdemeanors which by martial law should or ought to be punished with death, and by such summary course and order as is agreeable to martial law and as is used in armies in time of wars, to proceed to the trial and condemnation of such delinquents and offenders, and them to cause to be executed and put to death according to the law martial, for an example of terror to others, and to keep the rest in due awe and obedience. To which purpose our will and pleasure is that you cause to be erected such gallows and gibbets and in such places within the said counties or either of them as you shall think fit, and thereupon to cause the same offenders to be executed in open view that others may take warning thereby," &c.—(*Whitelock*, p. 1, *Rymer*, xviii. 254.)

*Rymer*, xviii.

A like commission of the year following, Oct. 4th, runs thus,—

A.D. 1626.

Charles, &c. To our right trusty and right beloved cousin and counsellor, Philip Earl of Montgomery, Lord Chamberlain of our household and our Lieutenant of our county of Kent, (and to Sir Nicholas Tufton and fourteen other knights, and to the mayors of Dover and Sandwich).

Kent.

It refers to some dissolute and disorderly persons amongst the soldiers and mariners entertained in our service to serve us in the royal fleet or navy, who either were in our service in our former fleet, or which for weighty considerations we intend with all convenient expedition now to set to sea, and may commit felonies, robberies, or other outrages or offences, to the terror and prejudice of our loving subjects, and the disturbance of our peace, &c., and then thus,—

"We have thought good by the advice of our Privy Council to take a fitting course for repressing and punishing of the same offences, if any such, and for the prevention of the like in the future.

"Know ye therefore that we, reposing assured trust and confidence in the wisdom, fidelity, and understanding, &c., have appointed you to be our commissioners, and we do by these presents give unto you, or any three or more of you, full power and authority in all places within our county of Kent, as well within liberties as without, to proceed according to the justice of martial law against such soldiers or mariners or other dissolute persons joining with them or any of them, as within the said county or any part thereof shall at any time after the publication of this our commission commit any robbery, felony, mutiny or other outrage or misdemeanor, or which shall with-

draw themselves from their places, service, or charge as aforesaid, or shall be found within the said county or any part thereof, which by the martial law should or ought to be punished with death, and by such summary course and order as is agreeable to martial law and as is used in armies in time of wars to proceed to the trial and condemnation of such delinquents and offenders, and them cause to be executed and put to death according to the law martial, for an example of terror to others, and to keep the rest in due awe and obedience, to which purpose our will and pleasure is that you cause to be erected such gallows and gibbets, and in such places within the said county as you shall think fit, and thereupon to cause the same offenders to be executed in open view, that others may take warning thereby to demean themselves in such due order and obedience as good subjects ought to do," &c. Signed at Canbury.—(*Rymer*, xviii. 763.)

Proclamation.

It was followed by a proclamation three days after (Oct. 7th.) at Whitehall, "for restraining the disorderly repair of mariners and soldiers to the King's court or City of London, whereby insufferable disorder may breed very great inconveniences if timely course should not be taken to suppress the same." The proclamation commands all such to remain at their quarters, and proceeds,—“And his Majesty doth also straightly charge and command all such soldiers and mariners and all other loose persons who can give no good account of their abode in these parts, that forthwith they return to the places whence they came, and that they duly observe his Majesty's royal will and pleasure herein upon pain of incurring his Majesty's high indignation and such further penalty as by martial law is appointed to be inflicted upon offenders in that kind.”—(*Rymer*, xviii. 765.)

Commissions.  
Sussex.

To the Earl of Arundel and Surrey, Earl Marshal of England, and Edward Earl of Dorset, Lieutenants of the county of Sussex, and to fourteen other baronets, knights, &c., and to one Richard Amhurst, serjeant at law, and to the Mayor of Chichester, was issued a like commission on 5th day of Sept. 1626 “to repress and punish dissolute and disordered persons among the soldiers and mariners entertained in our service to serve us in the royal fleet or navy, which for weighty considerations we intend with all convenient expedition to set to sea, and who might commit outrages, &c. to the terror and prejudice of the loving subjects.”

The commission authorized the persons therein named, within the county of Sussex to proceed according to the justice of martial law against such soldiers and mariners and other dissolute persons joined with them, who commit murder, robbery, &c., which by martial law should or ought to be punished with death, and by such summary course and order as is agreeable to martial law and as is used in armies in time of wars to proceed to the trial and condemnation of such delinquents, &c., and them cause to be executed and put to death according to the law martial.—(*Rymer*, vol. viii. p. 86, ed. 1743. Hague.)

*Rymer*, vol. viii.  
p. 120.  
ed. 1743.  
Hampshire.

On the 3rd Dec. of this year a like commission for the same objects as to the class of offenders, and with identical powers, issued to Edward Lord Conway, one of the principal secretaries of state and lieutenant of the county of Southampton, and to thirteen others, including the mayors of Southampton and Portsmouth, to execute martial law in that county.

A.D. 1627.  
Kent.

On the 30th of April 1627, a like commission to Sir Edward Hales, knight and baronet, and four others, was issued with the same object of repressing the expected disorders of the military and naval forces in the county of Kent, and conveying in the same terms authority to execute martial law, described by similar language.—(*Rymer*, vol. viii. p. 172, ed. 1743. Hague.)

*Rymer*, viii., p. 214.

On the 8th Nov. following, another commission issued to carry out

martial law upon persons of the soldiers and mariners who may, during their abode in and about the town of Plymouth, commit felonies, &c. It follows the same form as all the others issued by Charles, and is addressed to several persons, the chief being Captain Henry Woodhouse, whom it states had been directed to make his present repair to the town of Plymouth, there to take charge and government of those two thousand soldiers who were appointed to be conducted thither, and to arrive there by the first of this present month of November, being to be billeted in that town and the places adjacent in the counties of Devon and Cornwall.

Devon and Cornwall.

And another proclamation of the 25th day of January directed soldiers who had been billeted and provided for in several counties, but who were found wilfully to continue to lurk and remain "in our city of London, or the suburbs of the same, and straggle up and down in the highways and other places, to the ill example of the rest, and offence of our people, to repair into that county where the body of that regiment to which they respectively belong is billeted. And such as do any violence or outrage, or otherwise carry themselves than becometh soldiers in orderly discipline, shall be proceeded against by the course of martial law or otherwise."

A.D. 1628.  
Rymer, viii.  
ut supra, p. 224.  
Proclamation.

It is against these commissions of Charles that the part of the Petition of Right is pointed, which relates to martial law. (3 Chas. 1, c. 1, s. 4.) The clause relating to it was finished and added to that Petition on Thursday the 8th May, after a committee of the whole house had spent the time from 21st to 25th of April in debate about martial law.

A.D. 1628.  
3 Chas. 1, ch. 1.  
Rushworth, vol. i.

It recites that "whereas by authority in Parliament, 25 Edw. 3, it is declared and enacted that no man should be forejudged of life or limb against the form of the great charter and the law of the land, and by the said great charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm either by the customs of the same realm or by acts of parliament; And whereas no offender of what kind soever is exempted from the proceedings to be used and punishments to be inflicted by the laws and statutes of this your realm, nevertheless of late times divers commissions under your Majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land according to the justice of martial law, against such soldiers and mariners or other dissolute persons joining with them, as should commit any murder, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial. By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to be, have been judged and executed. And also sundry grievous offenders by colour thereof claiming an exemption have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid, which commissions and all others of like nature are wholly and directly contrary to the said laws and statutes of this your realm. They do therefore humbly pray your most excellent Majesty, &c. (Sect. 10.)

Petition of Right.

"That the aforesaid commissions for proceeding by martial law

may be revoked and annulled, and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by color of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land."

Conference of  
both houses.  
Rushworth, vol. i.

After this clause was resolved on, the same day the Petition was delivered to the Lords for their concurrence, at a conference managed by Sir Edward Coke, by whom the Petition was drawn.

On the 2nd June it was finally read and passed, but in the interval an attempt, in conference of the two houses, was made to modify the force of it, and specially as to martial law, by proposing counter forms of a declaration—the fourth and fifth heads of which touch that subject. The fourth was in substance "that his Majesty would graciously declare that in all cases within cognizance of the common law concerning the liberty of the subject, his Majesty would proceed according to the common law of the land; and the laws established in this kingdom, and in no other manner or wise." Here we find a repetition of the more general terms of the statutes passed in Edw. III.'s time, as if they had ceased to bind the crown, but no mention of their inconsistency with, or their frequent violation by reverting to, martial law, which last is not even named.

The fifth head was on the point of prerogative power to imprison the lieges; it proposes "that touching his Majesty's royal prerogative intrinsical in his sovereignty and betruſted him without from God, ad communem totius populi salutem et non ad destructionem, that his Majesty would resolve not to use or divert the same to the prejudice of any of his loyal people in the propriety of their goods or liberty of their persons; and in case for the security of his Majesty's royal person, the common safety of his people, or the peaceable government of this kingdom, his Majesty shall find just cause for reason of state to imprison or restrain any man's person, his Majesty would graciously declare that within a convenient time he shall and will express the cause of the commitment or restraint either general or special, and upon cause so expressed will leave him immediately to be tried according to the common justice of the kingdom."

Here again, though the common law for trial of subjects is pointed to, the pedantic allusion to a divine right of summary process of arrest, upon an undefined exercise of vague discretion termed "reason of state," left a loophole for arbitrary power, akin to martial law, to find a passage.

These insidious generalities were therefore rejected by the Commons. The Archbishop of Canterbury tendered them, of whose mind they savour; but when doing so, in a speech, he prayed the help of the Commons the better to come to the end, and professed that they were but a model to be added unto, altered, or diminished, as in their reasons and wisdoms they should think fit, after they had communicated the same to the rest of the members of the house.

Serjeant Ashley was of the conference, and there said amongst other things, that the question was too high to be determined by law, where the conqueror and conquered would suffer irreparable loss; an instance of professional servility, not unfrequent, but for which he was called to account and committed to custody by the Lords, when he recanted what he had said. (*Rushworth*, vol. i. p. 545.)

The petition of right, having stated what was established law, pronounced commissions of martial law for execution within the realm to be contrary to it. One of the authors of that petition, Sir Edward Coke, in his 3rd Inst. ch. 7, gives what was ever the law on this head: "If a lieutenant or other that hath commission of martial authority in time of peace hang or otherwise execute any man by colour of martial law this is murder, for this is against Magna Charta, ch. 29, and is done by such power and strength as the party cannot defend himself, and here the law implieth malice."

3rd Inst. ch. 7.  
Coke's statement  
of the law.

To the same effect Sir Matthew Hale lends his authority (*P. C. Pt. 1*, Hale, P. C., vol. i. ch. 42.) "If in the time of peace a commission issue to exercise martial law and such commissioners condemn any of the king's subjects (not being listed under the military powers), this is without all question a great misprision and an erroneous proceeding and accordingly adjudged in Parliament in the case of the Earl of Lancaster. And in that case the exercise of martial law in point of death in time of peace is declared murder."

The grievance met by the Petition of Right on the head of martial law, was confined to the issue by Charles of the commissions for its exercise during 1625, 1626 and 1627. A present and practical wrong had then to be set right by Parliament, and in doing this the objects of these commissions are recited and shown by the petition to conflict with positive law, that for a long time had been in force for securing the like object of enforcing criminal justice. All other illegal uses of martial law by former kings are left unnoticed by this Petition.

The commissions of Charles were specially meant for the control of military offenders, and such others though not of the military array who might join the soldiers and mariners in committing offences against the people. And the express object is to check acts done to the terror and prejudice of the subject, by military lawlessness.

These objects differ widely from those of the proclamations or commissions issued by Edw. VI., Mary, and Elizabeth, who assumed to exercise martial law to anticipate malice domestic and foreign levy, or to repress and punish existing insurgents. But Charles' exercise of martial law was for the control of the military force, at a time when there was no pretence that peace at home was broken or threatened by hostile forces.

It therefore was new use of a law at home unknown among former usurpations, which though violating the common and statute law, had never been so bare of a pretext derived from domestic dangers.

Still the tender care of quickly protecting the subjects from military violence, was plausible. So long however as the charter of Henry III., and the several statutes of Edw. I. and III. on this head, stood on the statute rolls, his substitution of martial law was simply their repeal by his sole act.

Not even as military discipline was it in time of peace at home legal to resort to such system, for Sir M. Hale declares that "though the King's subjects be listed under a general or lieutenant of the king's appointment under the great seal, and modelled into the form and discipline of an army, yet as long as it is time of peace in this kingdom they cannot be proceeded against as to loss of life by martial law."

With such plain conflict of right and wrong, yet Charles faltered when yielding to the pressure of statutes.

When he came to the House on 2nd June, to hear read and pass the Petition, before it was read he told both Houses—

Gentlemen,—I have come hither to perform my duty. I think no man can think it long, since I have not taken so many days in answering the Petition, as ye spent weeks in framing it; and I am come hither to show you, that as well in formal things as in essential, I desire to give you as much content as in me lies.

After the Petition had been read he returned this special answer:—

The king willeth that right be done according to the laws and customs of the realm, and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrong or oppressions contrary to their just rights and liberties, to the preservation whereof he holds himself in conscience as well obliged, as of his prerogative.

This answer was looked on as amounting to vague general promises, and therewith were the Commons dissatisfied, nor did it respond to the professions in his speech before the reading.

Object of Charles's commissions.

Hale, P.C., pt. 1, ch. 42.

Rapin, vol. ii. Passing of the Petition of Right.



On 7th June both houses therefore presented to Charles, who had come to them, this Petition :—

“May it please your most excellent Majesty, the Lords Spiritual and Temporal and Commons in Parliament assembled, taking into consideration that the good intelligence between your Majesty and your people doth much depend upon your Majesty’s answer upon their petition of right formerly presented with unanimous consent, do now become most humble suitors unto your Majesty, that you would be pleased to give a clear and satisfactory answer thereunto in full Parliament.”

The king replied :—“The answer I have already given you was made with so good deliberation and approved by the judgments of so many wise men, that I could not have imagined but it should have given you full satisfaction. But to avoid all ambiguous interpretations, and to show you there is no doubleness in my meaning, I am willing to pleasure you as well in words as in substance; read your petition, and you shall have an answer that I am sure will please you.”

The Petition was read, and the established answer returned :—“*Soit droit fait comme il est désiré—C. R.*”

Charles then said, “This I am sure is full, yet no more than I granted you in my first answer.” He might have also said with Suffolk,—

“Faith I have been a truant in the law;  
I never yet could frame my will to it,  
And therefore frame the law unto my will.”

*Hen. VI., Part 1, Act 2.*

This Petition closed the conflict between the claim to exercise martial law, and the principles of statute and common law, within the realm of England.

It does not appear in any time when martial law was proclaimed or executed, that within a reasonable time the commissions for justices in eyre, of oyer and terminer, and gaol delivery, might not have been executed for the trial and punishment of crimes. For even in times of most perfect peace, the courts of criminal jurisdiction were and are only put in action at reasonable intervals of time; and where greater promptness is called for, special commissions issue.

In the earlier reigns the proclamations and commissions had spoken of the law to be enforced as “*the order of law martial wherein no delay or deferring of time should be permitted,*” and that rebels “*shall without delay be executed according to the order of martial law,*” and that they should “*with all severity be proceeded against and punished according to martial law,*” or that they “*be speedily suppressed by execution to death according to the justice of her Majesty’s martial law.*”

In the time of Charles this law is lastly described in relation to offences “*which by martial law should or ought to be punished with death, and by such summary course and order as is agreeable to martial law and as is used in armies in time of wars.*”

These descriptions all point to one and the same system theretofore known and enforced abroad by the king or his lieutenants, to preserve order and repress crime among the king’s forces during war; and before the establishment of standing armies introduced a demand for a fixed code of military law, with special process to carry it into effect, under provisions of the mutiny acts.

In the earliest times after the Conquest mention is found of high functionaries, whose office it was to secure general order in the army in time of war against offenders among the military array, and who possessed for the purpose summary powers and jurisdiction over life and limb. In later times commissions were employed as means of conferring like powers to be exercised by those in command of the forces abroad, which same powers it was attempted to confer on com-

missioners and lieutenants at home, during troubled times, to be exercised with like summary and arbitrary speed, as far as the system might be adapted to subjects, who, being civilians, could not be guilty of mere military offences.

"The lord high constable of England and the earl marshal of England were the judges of the court called "*curia militaris*," the marshal court, and this court is the fountain of martial law, and the earl marshal is both one of the judges, and to see execution be done."

Coke, 4 Inst. c. 17.  
Curia militaris.

As conservators of the peace before these were superseded by justices of the peace, the lord marshal and high constable of England are named among other high officials as having (closed in their offices) a credit for conservation of the peace over the whole realm, and might award precepts and take recognizance for the peace.

Lambard, c. 3.

Of the high constable of England the name is, by Sir R. Cotton, derived from the Latin "*comes stabuli*," his office giving him charge of the horsemen of the army during war.

But Sir Edward Coke gives another more suited to his taste, from the Saxon *cuning*, *i.e.* king, and *stable*, *i.e.* column, and anciently written *cuningstable*, *quasi* column *regis*. (4 Inst. c. 17.)

Of the "marshal of the king's host," the name is derived by some from Saxon "*marischalk*, *i.e.* *equitum magister*." This word, says Coke, is either derived from Mars, or from *marc*, a horse, and *schalc*, which signifieth in the Saxon tongue a master or governor.

Coke, 1st Inst. lib. 2, c. 3, s. 102.

In the laws before the conquest it is said, "*mareschalli exercitus seu ductores exercitus heretoches per Anglos vocabantur. Illi ordinabant acies densissimas in preliis, et alas constituebant prout decuit, et prout ei melius visum fuerit, ad honorem coronæ et ad utilitatem regni.*"

Heretochius agreeth with either of these great officers, constabularius or marischallus, "*Isti vero eligebantur per commune concilium pro communi utilitate regni per provincias et patricos in pleno folkmote.*"

4 Inst. c. 17.

The office of constable of England was afterwards of inheritance by tenure of manors held by grand serjeanty in the line of the Bohuns, Earls of Hereford and Essex, and afterwards of right in the line of the Staffords and Dukes of Buckingham, and heirs general to them: at the last, by the opinion of all the judges, it was lawfully descended to Edward, Duke of Buckingham, who was attainted of treason in anno 13 Hen. 8, whereby this office became forfeited to the crown, and since that time, both in respect of the amplitude of the authority both in war and peace, and of the charge, it was never granted to any subject, but now of late *hæc vice*.

Idem.  
Lord High constable.

Carte, B xv.

Edward Stafford, beheaded 17th May, 1521, is made to say of himself—

"When I came hither I was Lord High Constable,  
And Duke of Buckingham; now poor Edward Bohun: . . .  
My noble father, Henry of Buckingham  
Who first raised head against usurping Richard,  
Flying for succour. . . .  
And without trial fell; God's peace be with him.  
Henry the Seventh succeeding, truly pitying  
My father's loss, like a most royal prince,  
Restored me to my honours. . . .  
I had my trial,  
And must needs say a noble one, which makes me  
A little happier than my wretched father."

Hen. VIII., Act 2, sc. 1.

The office of marshal, held at one time for life by grant from the crown, was so held in Edward 1st's time by Humfrey de Bohun Earl of Hereford, who was required by the king, in the parliament at Salisbury, to pass over into Gascony with an army; "whereunto he replied that if

Hearne, vol. 2, paper xxii.  
Earl marshal.

the king would go in person he would willingly go, and march before him in the forward of the battle, as by right he was bound to do : whereunto the king replied, that he should go with others, though that he himself went not : whereunto the earl replied that he was not bound so to do : whereunto the king, being angry, said, by God sir earl, thou shalt go or hang. And I swear, said the earl, the same oath, that I will neither go nor hang, and so departed from the king without leave taken."

Idem

Again, when held by Mortimer, Earl of March, "in the time of king Edward 3rd, John of Gaunt took the marshal's rod from him and gave it unto Sir H. Percy, and made a motion in parliament that there might be no more mayors in London, but that the marshal of England, as well within the city as without, might arrest such as had offended, but the Londoners armed themselves and sought for the Duke of Lancaster, who that day dined at the house of one John of Ipre, and when word was brought unto him that the Londoners being armed did seek for him, he leapt so hastily from his oysters, that he hurt both his legs against the form ; and wine was offered to his oysters, but he would not drink for haste."

Camden.  
Hearne, II.

Both these offices are to be found named in the time of William the Conqueror. It is said that Roger Bigod, Earl of Norfolk, first assumed the style of *marshal of England* in the reign of Edward 1st, and (as pride is highest when downfall is nearest) he was forced to surrender to King Edward 1st this office, for certain insolences against the king.

1 Inst., lib. 2,  
c. 8, s. 153.

Coke says that though there were divers lords marshals of England before the reign of Richard 2nd, yet King Richard 2nd created Thomas Mowbray, Duke of Norfolk, the first *earl marshal* of England, per nomen comitis marischalli Angliæ.

4 Inst., Just.  
c. 17.

The grant cited in the 4th Inst. uses this style—12th June, 20th year, Richard 2nd. "Rex &c., sciatis quod cum nos nuper de gratiâ nostra speciali concesserimus dilecto consanguineo nostro Thomæ Comiti Nottingham officium marischalli Angliæ, habendum ad totam vitam suam—nos jam de ulteriori gratiâ nostrâ concessimus præfato consanguineo nostro officium prædictum unâ cum nomine et honore comitis marischalli habendum sibi et heredibus suis, &c., in perpetuum."

These officers held a court of chivalry for disputes of arms, &c., titles, offices, &c., and had also a civil jurisdiction attached to the presence of the royal residences, of limited extent, but to which they, taking example from the courts of common law, seemed to think as judges, that the maxim should hold, "Est boni judicis ampliare jurisdictionem."

They were, however, hedged in by several statutes when they trespassed on the civil jurisdiction of the common law ; as by 28 Ed. 1, c. 3 ; 8 Richard 2, c. 5.

Jurisdiction of  
the martial court.

It is here only into their power to deal with and punish offences at home that we need enquire. For the course of their powers abroad, where no records were kept, may be partly seen from their exercise of corresponding powers in like cases at home.

13 Rich. 2, c. 2.

A.D. 1389.

Upon the commons' complaint that the court of the constable and the marshal had incroached the trial of causes that belong to the jurisdiction of the courts of common law, the 13 Richard 2, c. 2, enacted that "to the constable it pertaineth to have cognizance of contracts touching deeds of arms and of war out of the realm, and also of things that touch war within the realm which cannot be determined nor discussed by the common law, with other usages and customs to the same matters pertaining, which other constables heretofore have duly and reasonably used in their time." This statute then provides process to remove civil suits out of this court.

1 Hen. 4, c. 14.  
A.D. 1399.

Of this same court it is declared by 1 Hen. 4, c. 14, "That appeals within the realm should be tried and determined by the good laws of

the realm made in the time of the king's progenitors, and that all appeals made of things done out of the realm should be tried and determined before the constable and marshal of England for the time being." In 1 Inst. Lib. 3, c. 13, s. 745, Sir E. Coke says, "There is a court of the constable and marshall who have cognizance of contracts of deeds of armes and of warre out of the realm, and also of things touching warre within the realm which may not be determined or discussed by the common law, and also all appeals of offences done out of the realm, and they proceed according to the civil law." This refers to the provisions of the statute of Richard 2. In the same Institute (b. 3, c. 7, s. 440) he also says "all matters done out of the realm of England concerning war, combat and deeds of arms, shall be tried and determined before the constable and marshal of England, before whom trial is by witnesses, or by combat, and their proceeding is according to the civil law and not by the oath of twelve men."

Sir M. Hale comments on this statute of Richard 2, in reference to the exercise of martial law in time of peace at home, to the like effect as the judgments of parliament in the time of Edward 3, on appeal. "But suppose," says he, (P. C. vol. i. p. 499) "the king's subjects be listed under a general or lieutenant of the king's appointment under the great seal, and modelled into the form and discipline of an army, yet as long as it is *tempus pacis* in this kingdom, they cannot be proceeded against as to loss of life by martial law."

Hale, P. C., pt. 1, ch. 42.

"And this appears also by the statute of 13 Richard 3, c. 2, the constable and marshal who are the *judices ordinarii* in cases belonging to the martial law, are yet thereby declared to have no jurisdiction within the realm but of things that touch war, which cannot be discussed nor determined by the common law. It must therefore be a time of war that must give exercise to their jurisdiction, at least in cases of life."

After the statute of Richard 2, however, the court of the constable and marshal was with difficulty kept within these limits. But jurisdiction over crime was jealously denied by parliament to any tribunal save the king's courts. In the 5th year of Henry 4, we find in the rolls of parliament (vol. 3, p. 530), "That upon the many petitions and requests of the commons made in parliament to the king on behalf of Benet Wilman, who is impeached by some ill-wishers, and imprisoned and put to answer before the constable and marshal, contrary to the statutes and common law of England, that the king with the advice and assent of the lords in parliament, would grant and direct that the said Benet be treated and dealt with according to the common law of England, notwithstanding any commission to the contrary, or impeachment against him before the constable and marshal aforesaid."

A.D. 1404.  
Rot. Parl., vol. iii.  
5 Hen. 4.

Thereon a writ was directed to the justices of the King's Bench, in the following form:—

"The king to his justices assigned to hold pleas before ourself, greeting. Herewith we send you enclosed the tenor of an enrolled matter on the rolls of parliament, commanding you that on inspection thereof you further cause to be done, what you may see should be done of right, and according to the laws and custom of our realm of England."

The real limit of criminal jurisdiction, therefore, belonging to the court of the constable and marshal of England was as described by Sir Edward Coke, confined to matters arising beyond the bounds of England.

In 1 Institute, b. ii. c. 3, s. 102, he says:—"If a subject of the king be killed by another of his subjects out of England in any foreign country, the wife, or he that is heir of the dead, may have an appeal of this murder or homicide before the constable and the marshal whose sentence is upon testimony of witnesses or combat. And accordingly

1 Inst. b. ii., c. 3.

where a subject of the king was slain in Scotland by others of the king's subjects, the wife of the dead had her appeal therefore before the constable and marshal."

And so it was resolved (25 Eliz.) in the reign of Queen Elizabeth, in the case of Sir Francis Drake, who struck off the head of Dowtie in partibus transmarinis, that his brother and heir might have an appeal, *Sed Regina noluit constituere constabularium Angliæ, &c., et ideo dormivit appellum.*"

"If a man be mortally wounded in France, and dieth thereof in England, it is said an appeal doth lie upon the said statute (1 Hen. 4, c. 14), for it is not punishable by the common law, and the proceeding then is upon witnesses or combat, and not by jury, and the mortal wound was given out of the realm." In his chapter on petit treason, 3 Inst., he says:—

"It seemeth by the ancient common law one accuser or witness was not sufficient to convict any person of high treason. For in that case where there is but one accuser it shall be tried before the constable and marshal by combat, as by many records appeareth. But the constable and marshal have no jurisdiction to hold plea of anything which may be determined and discussed by the common law." (This is a comment upon the provisions of 1 Hen. 4, c. 14.)

Coke, 3 Inst. c. 7.

He further illustrates this in 3 Inst. c. 7. "If," says he, "two of the king's subjects go over into a foreign realm and fight there, and one kills the other, this murder being done out of the realm cannot be for want of trial, heard and determined by the common law. But it may be heard and determined before the constable and marshal."

And again as another case then within their jurisdiction and akin to the last. "If one mortally wound another abroad, and he that is wounded come into *England and die*, this cannot be tried by the common law, because the stroke was given where no visne can come, but the same shall be heard and determined before the constable and marshal," and for this he cites the words of 13th Rich. 2, c. 2, above. And so if a mortal blow be given on the high seas, of which the person so wounded dies within the realm, neither the admiral nor the common law can try the offender, but only the constable and marshal.

"So, also, if one is accused of high treason done out of the realm, the constable and marshal should have cognizance thereof, because it is not triable by jury, according to the course of common law of the realm."

Their court was put in action in Edward 4th's troubled reign, and by its authority men were tried and executed. And here one instance will show in what manner this jurisdiction was then enforced.

Stow, 418.  
1464, 15 May.

After the battle of Hexham, the earls of Warwick and Northumberland took Bambrough Castle, "and Sir Ralph Grey being taken in Bambrough, for that he had sworn to be true to King Henry, was condemned and had judgment given upon him, by the Earl of Worcester, high constable of England. This judgment was pronounced at Doncaster against the said Ralph Grey for rebellion and keeping the castle of Bambrough against King Edward." It was as follows, viz. :—

Sir Ralph Grey's  
trial.

"Sir Ralph Grey, for thy treason the king hath ordained that thou shouldest have had thy spurs taken off by the hard heels by the hand of the Master Cooke, who is here ready to do as was promised thee, at the time that he took off thy spurs and said to thee, as is accustomed:  
\* \* \* \* Moreover, Sir Ralph Grey, the king had ordained here thou mayest see, the kings of arms and heralds, and thine own proper coat of arms, which they should tear off thy body, and so shouldest thou as well be disgraced of thy worship, nobles and arms, as of thy order of knighthood; also here is another coat of thine arms reversed, the which thou shouldest have worn on thy body, going to thy

deathwards, for that belongeth to thee after the law. \* \* \* \*  
Now, Sir Ralph Grey, this shall be thy penance; thou shalt go on thy feet unto the town's end, and there thou shalt be laid down and drawn to a scaffold made for thee, and thou shalt have thy head smitten off, thy body to be buried in the friers, thy head where the king's pleasure shall be."

While the King in person led the military forces employed abroad, 11 Hen. 8, c. 18. the constable and marshal were of his train, and their duties and powers put to his service. By two statutes, 11 Hen. 7, c. 18, and 19th year of the same king, c. 1, this duty is enforced generally as to "every subject who by the duty of his allegiance is bounden to serve and assist his prince and sovereign lord at all seasons when need shall require, and most specially such persons as have by him promotion or advancement, as grants and gifts of offices, fees, and annuities, which owe and verily be bound of reason to give their attendance upon his royal person to defend the same, when he shall fortune to go in his person in wars for defence of the realm, and against his rebels and enemies, for the subduing and repressing of them and their malicious purpose."

After the Tudors, personal presence of the king with the army abroad was not practised by the Stuarts. Such a duty, had there even been occasion for it, would have been repulsive to the peculiar nerves of James I. A.D. 1626. Commissions of martial law abroad.

Charles 1 being kept by domestic matters at home, issued to his officers sent with his military forces abroad, commissions to exercise martial law. At this period the office of high constable had merged in the crown, and that of earl marshal had fallen into disuse for the purpose.

On the 3rd day and, again, on the 25th day of November, 1626, commissions issued to Sir Charles Morgan and others who commanded regiments of soldiers the subjects of Charles, then serving in the United Provinces, and which were to be sent into Germany to support the king of Denmark against the king of Spain. Rymer, vol. viii., pp. 106, 116, Ed. 1743. A.D. 1626.

To these officers and to the survivor authority is given by these commissions to lead their regiments, consisting of 6000 men, to join the king of Denmark, and "to command and govern the said several regiments according to the discipline of martial laws," &c. "And to the end all discords and mutinies among the soldiers of those regiments may be prevented and avoided, we do by these presents grant unto the said Charles Morgan (and to the survivor, &c.) full powers and authority before themselves or their sufficient deputies respectively to hold and keep a martial court, and therein by examination of witnesses upon oath to hear and determine any treasons, treacherous attempts, wilful murder, or notable mutiny, or other criminal causes whatsoever, and the same being justly proved, to chastise, correct, and punish the offenders as the greatness or quality of the fault requireth, and execute and take away the life of any member in form of martial law, and otherwise to punish for small offences, as in their good discretions respectively shall be held fit, and as is commonly used by the order of martial law."

To Sir John Burlacy and another who had likewise command of regiments in the United Provinces, a like commission, granting authority to execute martial law under like circumstances, was issued on the 20th October of the same year. (*Rymer, ut supra*, p. 104.)

Another commission corresponding to these in the particulars of place, and objects of the employment of regiments of soldiers abroad, under command of Robert, lord Willoughby of Beake and Eresby, the lord great chamberlain of England, Robert, earl of Essex, and two others, was issued to these persons on 7th November following, granting the same powers of martial law, to be exercised on foreign service. Rymer, vol. viii. p. 3, Ed. 1743.

These commissions, though they conferred summary powers abroad upon the commanders of forces for the control of men under circum-

Hearne,  
Collec. v. ii.

stances when no other means could be used to suppress or correct crimes and disorders, were what at home were sought to be employed as equally necessary for quelling riots and insurrection. For this end, what was made the excuse for the star chamber, might also with equal want of foundation be advanced. For it was said, "as in the government of all commonwealths sundry things do fall out both in peace and war that do require an extraordinary help, and cannot abide the usual cure of common rule and daily justice, the which is not performed but after one sort, and that not without some delay of help and expense of time; so, albeit here within this our realm of England the most part of causes in complaint are referred to the ordinary process and solemn handling of the common law and justice itself, yet there always have arisen some few matters which have been reserved to a higher hand, and have been left to the aid of absolute government and authority."

To such tribunal the accused might well exclaim with Clarence:—

"What is my offence?  
Where is the evidence that doth accuse me?  
What lawful quest have given their verdict up  
Unto the frowning judge? Or who pronounce'd  
The bitter sentence of poor Clarence' death?  
Before I be convict by course of law,  
To threaten me with death is most unlawful."

*Rich. III., Act. 1, sc. 4.*

## Warrant of Apprehension.

AS to warrants of commitment, see "*Commitment.*"

As to backing warrants, see "*Justices of the Peace. Local Jurisdiction.*"

- I. *When necessary, previous proceedings, when to be granted. Forms, and how long in force, &c., and right to withdraw or amend it, p. 1114.*
- II. *Mode of executing, and herein of Breaking open Doors, &c., p. 1132.*
- III. *What to be done after the Arrest, p. 1137.*

### I. When necessary, previous Proceedings, when to be granted. Forms—how long in force—right to withdraw and amend.

Who may be  
arrested, and for  
what.

Arrest without  
warrant.

Justice arresting  
without warrant.

We have already pointed out who may be arrested, and for what crimes, at what time, in what places, and by whom. (See "*Arrest.*")

We have also seen as to when a party may be arrested *without* a warrant. (See "*Arrest.*") In general, it is best to obtain a warrant if there be time.

If a justice see a felony or other breach of the peace committed in his presence, he may in his own person apprehend the felon. And so he may by word command any person to apprehend him, and such command is a good warrant without writing; but if the same be done in his absence, then he must issue his warrant in writing. (2 *Hale*, 86; *Dalt. c.* 169.)

The warrant may be granted by the privy council or secretaries of state (*Fortescue*, 140; *R. v. Kendal*, *Lord Raym.* 65; 1 *Salk.* 347, *S. C.*), by the speaker of the House of Commons, (*Sir F. Burdett v. Colman*, 14 *East*, 163,) or Lords, (*R. v. Flower*, 8 *T. R.* 314;) by justices of gaol delivery, (1 *Leach*, 116,) or oyer and terminer, (*Hale*, 599;) justices at sessions, (*Ib.*;) or by a judge of the Court of Queen's Bench. (1 *Hale*, 578; 2 *Barnard*, 28.) It is most usually granted by a single justice of the peace. (4 *Bla. Com.* 290; 1 *Chit. C. L.* 34.)

1. When necessary, &c.  
Forms, &c.

Warrant, by whom granted.

In all cases of treason, felony, or actual breach of the peace, a magistrate may, on a proper charge made, or on his own view, issue a warrant to apprehend the suspected offender. (2 *Hale*, 72, 78; 2 *Haw. c.* 12; *Butt v. Conant*, 1 *B. & B.* 548.)

When may be granted.

Lord *Hale* proves at large, contrary to the opinion of Lord *Coke*, (4 *Inst.* 177,) that a justice hath power to issue a warrant to apprehend a person suspected of felony, before he is indicted; and that though the original suspicion be not in himself, but in the party that prays his warrant. (2 *Hale*, 107, 110.) For the justices are judges of the reasonableness of the suspicion, and when they have examined the party accusing touching the reasons of his suspicion, if they find the causes of suspicion to be reasonable, it is now become the justices' suspicion as well as theirs. (2 *Hale*, 79, 80.) And in another place, speaking of this opinion of Lord *Coke*, he delivers himself seemingly with a kind of warmth not usual to him: "I think," says he, "the law is not so, and the constant practice, in all cases, hath obtained against it, and it would be pernicious to the kingdom if it should be as Lord *Coke* delivers it; for malefactors would escape unexamined and undiscovered, for a man may have a probable and strong presumption of the guilt of a person, whom yet he cannot positively swear to be guilty." (1 *Hale*, 579.) Mr. *Hawkins* likewise seems to be of the same opinion against Lord *Coke*, but delivereth himself with his wonted caution and candour. "It seems probable," he says, "that the practice of justices of the peace, in relation to this matter, is now become a law, and that a justice may justify the granting of a warrant for the arrest of any person, upon strong grounds of suspicion, for a felony, or other misdemeanor, before any indictment hath been found against him; yet inasmuch as justices claim this power rather by connivance than any express warrant of law, and since the undue execution of it may prove so highly prejudicial to the reputation as well as the liberty of the party, a justice cannot well be too tender in his proceedings of this kind, and seems to be punishable not only at the suit of the king, but also of the party grieved, if he grant any such warrant groundlessly and maliciously, without such a probable cause as might induce a candid and impartial man to suspect the party to be guilty." (2 *Haw. c.* 13, s. 18.)

Upon suspicion.

In this state of the law it was deemed proper to legislate on the duties of justices with respect to their powers of issuing warrants. The subject is included in the general duties of justices out of sessions, codified by the 11 & 12 Vict. c. 42, and which has made some material alterations in the law. The act is intitled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to Persons charged with Indictable Offences;" and after reciting that it would conduce much to the improvement of the administration of criminal justice within England and Wales, if the several statutes and parts of statutes relating to the duties of her Majesty's justices of the peace therein, with respect to persons charged with indictable offences, were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by positive enactment, enacts (s. 1), "that in all cases where a charge or complaint (A.) shall be made before any one or more of her Majesty's justices of the

11 & 12 Vict. c. 42.

For what offence a justice of the



1. *When necessary, &c.  
Forms, &c.*

11 & 12 Vict. c. 42.  
peace may grant  
a warrant or sum-  
mons to cause a  
person charged  
therewith to be  
brought before  
him.

In what cases the  
party may be sum-  
moned instead of  
issuing a warrant  
in the first in-  
stance.

If the summons  
be not obeyed,  
then a warrant  
may be issued.

peace for any county, riding, division, liberty, city, borough, or place within England or Wales, that any person has committed or is suspected to have committed any treason, felony, or indictable misdemeanor, or other indictable offence whatsoever (a), within the limits of the jurisdiction of such justice or justices of the peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such justice or justices is residing or being or is suspected to reside or be within the limits of the jurisdiction of such justice or justices, then and in every such case, if the person so charged or complained against shall not then be in custody, it shall be lawful for such justice or justices of the peace to issue his or their warrant (B.) to apprehend such person, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough, or place, to answer to such charge or complaint, and to be further dealt with according to law: Provided always, that in all cases it shall be lawful for such justice or justices to whom such charge or complaint shall be preferred, if he or they shall so think fit, instead of issuing in the first instance his or their warrant to apprehend the person so charged or complained against, to issue his or their summons (C.) directed to such person, requiring him to appear before the said justice or justices at a time and place to be therein mentioned, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place as may then be there, and if after being served with such summons in manner hereinafter mentioned he shall fail to appear at such time and place, in obedience to such summons, then and in every such case the said justice or justices, or any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place may issue his or their warrant (D.) to apprehend such person so charged or complained against, and cause such person to be brought before him or them, or before some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the said charge or complaint, and to be further dealt with according to law: Provided nevertheless, that nothing herein contained shall prevent any justice or justices of the peace from issuing the warrant hereinbefore first mentioned, at any time before or after the time mentioned in such summons for the appearance of the said accused party."

(A.)

Information and complaint for an indictable offence.

*The information and complaint of C. D. of [yeoman], taken  
to wit. } this day of , in the year of our Lord , before the  
undersigned [one] of her Majesty's justices of the peace in and for the said  
[county] of , who saith that [ &c., stating the offence].  
Sworn before [me] the day and year first above mentioned, at*

J. S.

(B.)

Warrant to apprehend a person charged with an indictable offence.

*To the constable of , and to all other peace officers in the said [county]  
of .*

*Whereas A. B. of [labourer], hath this day been charged upon oath  
before the undersigned, [one] of her Majesty's justices of the peace in and for the  
said county of , for that he, on at , did [ &c., stating*

(a) This would include perjury.

shortly the offence]: *These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before [me], or some other of her Majesty's justices of the peace in and for the said [county], to answer unto the said charge, and to be further dealt with according to law.*

1. When necessary, &c.  
Forms, &c.

11 & 12 Vict. c. 42.

*Given under my hand and seal, this                      day of                      , in the year of our Lord                      , at                      in the [county] aforesaid.*

*J. S. (L. s.)*

(C.)

Summons to a person charged with an indictable offence.

*To A. B. of                      [labourer].*

*Whereas you have this day been charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of                      , for that you, on                      at                      [&c., stating shortly the offence]: These are therefore to command you, in her Majesty's name, to be and appear before me on                      at                      o'clock in the forenoon, at                      , or before such other justice or justices of the peace for the same [county] as may then be there, to answer the said charge, and to be further dealt with according to law. Herein fail not.*

*Given under my hand and seal, this                      day of                      , in the year of our Lord                      , at                      in the [county] aforesaid.*

*J. S. (L. s.)*

(D.)

Warrant where the summons is disobeyed.

*To the constable of                      , and to all other peace officers in the said [county] of                      .*

*Whereas on the                      last past, A. B. of                      [labourer], was charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of                      , for that [&c., as in the summons]: And whereas [I] then issued [my] summons to the said A. B., commanding him, in her Majesty's name, to be and appear before [me] on                      at                      o'clock in the forenoon, at                      , or before such other justice or justices of the peace for the same [county] as might then be there, to answer the said charge, and to be further dealt with according to law: And whereas the said A. B. hath neglected to be or appear at the time and place appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons was duly served upon the said A. B.: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before me, or some other of her Majesty's justices of the peace in and for the said [county], to answer to the said charge, and to be further dealt with according to law.*

*Given under my hand and seal, this                      day of                      , in the year of our Lord                      , at                      in the [county] aforesaid.*

*J. S. (L. s.)*

Sect. 2. That in all cases of indictable crimes or offences of any kind or nature whatsoever committed on the high seas, or in any creek, harbour, haven, or other place in which the admiralty of England have or claim to have jurisdiction, and in all cases of crimes or offences committed on land beyond the seas, for which an indictment may legally be preferred in any place within England or Wales, it shall be lawful for any one or more of her Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales in which any person charged with having committed or with being suspected to have committed any such crime or offence shall reside or be, or shall be supposed or suspected to reside or be, to issue his or their warrant (E.) to apprehend the person so charged, and to cause him to be brought before him or them, or some other justice

Warrant to apprehend for offences committed on the high seas or abroad.

1. *When necessary, &c.* or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the said charges, and to be further dealt with according to law.  
*Forms, &c.*

11 & 12 Vict. c. 42.

(E.)

Warrant to apprehend a Person charged with an indictable Offence committed on the High Seas or abroad.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "*on the high seas, out of the body of any county of this realm, and within the jurisdiction of the Admiralty of England.*"

For offences committed abroad, for which the parties may be indicted in this country, the warrant may also be the same as in ordinary cases, but describing the offence to have been committed "*on land out of the United Kingdom, to wit, at in the kingdom of*," or "*at in the East Indies,*" or "*at in the island of in the West Indies,*" or as the case may be.

Warrant to apprehend a party against whom an indictment is found.

Sect. 3. That where any indictment shall be found by the grand jury in any court of oyer and terminer or general gaol delivery, or in any court of general or quarter sessions of the peace against any person who shall then be at large, and whether such person shall have been bound by any recognizance to appear to answer to the same or not, the person who shall act as clerk of the indictments at such court of oyer and terminer or gaol delivery, or as clerk of the peace at such sessions, at which the said indictment shall be found, shall at any time afterwards, after the end of the sessions of oyer and terminer or gaol delivery, or sessions of the peace at which such indictment shall have been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of one shilling, if such person shall not have already appeared and pleaded to such indictment, grant unto such prosecutor or person a certificate (F.) of such indictment having been found; and upon production of such certificate to any justice or justices of the peace for any county, riding, division, liberty, city, borough or place in which the offence shall in such indictment be alleged to have been committed, or in which the person indicted in and by such indictment shall reside or be, or be supposed or suspected to reside or be, it shall be lawful for such justice or justices, and he and they are hereby required, to issue his or their warrant (G.) to apprehend such person so indicted, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough or place, to be dealt with according to law, and afterwards, if such person be thereupon apprehended and brought before any such justice or justices, such justice or justices, upon its being proved upon oath or affirmation before him or them that the person so apprehended is the same person who is charged and named in such indictment, shall, without further inquiry or examination, commit (H.) him for trial, or admit him to bail, in manner hereinafter mentioned; or if such person so indicted shall be confined in any gaol or prison for any other offence than that charged in the said indictment, at the time of such application, and production of the said certificate to such justice or justices as aforesaid, it shall be lawful for such justice or justices and he and they are hereby required, upon it being proved before him or them upon oath or affirmation that the person so indicted and the person so confined in prison are one and the same person, to issue his or their warrant (I.) directed to the gaoler or keeper of the gaol or prison in which the person so indicted shall then be confined as aforesaid, commanding him to detain such person in his custody until by her Majesty's writ of

How, if he be already in custody for some other offence.

*habeas corpus* he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of his custody by due course of law.

1. *When necessary, &c.*  
*Forms, &c.*

11 & 12 Vict. c. 42.

(F.)

Certificate of Indictment being found.

*I hereby certify that at [court of oyer and terminer and general gaol delivery, or a court of general quarter sessions of the peace,] holden in and for the [county] of , at , in the said [county], on , a bill of indictment was found by the grand jury against A. B., therein described as A. B., late of [labourer], for that he [&c., stating shortly the offence], and that the said A. B. hath not appeared or pleaded to the said indictment.*

*Dated this       day of       , 18       .*

*J. D.*

*Clerk of the indictments on the       circuit,  
or  
Clerk of the peace of and for the said [county].*

(G.)

Warrant to apprehend a Person indicted.

*To the constable of       , and to all other peace officers in the said [county] of       .*

*Whereas it hath been duly certified by J. D., clerk of the indictments on the circuit [or clerk of the peace of and for the [county] of       ], [that, &c., stating the certificate]: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before [me], or some other justice or justices of the peace in and for the said [county], to be dealt with according to law.*

*Given under my hand and seal, this       day of       , in the year of our Lord       , at       , in the [county] aforesaid.*

*J. S. (L. S.)*

(H.)

Warrant of Commitment of a Person indicted.

*To the constable of       and to the keeper of the [common gaol, or house of correction,] at       , in the said [county] of       .*

*Whereas by [my] warrant under my hand and seal, dated the       day of       , after reciting that it had been certified by J. D. [&c., as in the certificate], [I] commanded the constable of       and all other peace officers of the said county, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before [me], the undersigned [one] of her Majesty's justices of the peace in and for the said [county], or before some other justice or justices of the peace in and for the said [county], to be dealt with according to law: And whereas the said A. B. hath been apprehended under and by virtue of the said warrant, and being now brought before [me], it is hereupon duly proved to [me] upon oath, that the said A. B. is the same person who is named and charged in and by the said indictment: These are therefore to command you, the said constable, in her Majesty's name, forthwith to take and safely convey the said A. B. to the said [house of correction] at       , in the said [county], and there to deliver him to the keeper thereof, together with this precept; and I hereby command you, the said keeper, to receive the said A. B. into your custody in the said house of correction, and him there safely keep until he shall be thence delivered by due course of law.*

*Given under my hand and seal, this       day of       , in the year of our Lord       , at       , in the [county] aforesaid.*

*J. S. (L. S.)*

1. *When necessary, &c.*  
*Forms, &c.*

(I.)

11 &amp; 12 Vict. c. 42.

Warrant to detain a Person indicted who is already in Custody for another Offence.

To the keeper of the [common gaol, or house of correction,] at \_\_\_\_\_, in the said [county] of \_\_\_\_\_.

Whereas it hath been duly certified by J. D., clerk of the indictments on the circuit [or clerk of the peace of and for the county of \_\_\_\_\_], that [&c., stating the certificate]: And whereas [I am] informed that the said A. B. is in your custody in the said [common gaol] at \_\_\_\_\_ aforesaid, charged with some offence or other matter; and it being now duly proved upon oath before [me] that the said A. B. so indicted as aforesaid, and the said A. B. in your custody as aforesaid, are one and the same person, these are therefore to command you, in her Majesty's name, to detain the said A. B. in your custody in the [common gaol] aforesaid until by her Majesty's writ of habeas corpus he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in [county] aforesaid.

J. S. (L. S.)

Warrant may be issued on a Sunday.

Sect. 4. That it shall be lawful for any justice or justices of the peace to grant or issue any warrant as aforesaid, or any search warrant, on a Sunday as well as on any other day.

Sects. 5 and 6 extend the power of acting by justices in adjoining jurisdiction. See "*Justices of the Peace*," "*Local Jurisdiction*."

Information for indictable offence.

Sect. 8. That in all cases where a charge or complaint for any indictable offence shall be made before such justice or justices as aforesaid, if it be intended to issue a warrant in the first instance against the party or parties so charged, an information and complaint thereof (A.) in writing, on the oath or affirmation of the informant or of some witness or witnesses in that behalf, shall be laid before such justice or justices: Provided always, that in all cases where it is intended to issue a summons instead of a warrant in the first instance, it shall not be necessary that such information and complaint shall be in writing, or be sworn to or affirmed in manner aforesaid, but in every such case such information and complaint may be by parol merely, and without any oath or affirmation whatsoever to support or substantiate the same: Provided also, that no objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examination of the witnesses in that behalf, as hereinafter mentioned.

Summons.

Sect. 9. That upon such information and complaint being so laid as aforesaid, the justice or justices receiving the same may, if he or they shall think fit, issue his or their summons or warrant respectively as hereinbefore is directed, to cause the person charged as aforesaid to be and appear before him or them, or any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to be dealt with according to law: and every such summons (C. ante) shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information, and shall require the party to whom it is so directed to be and appear at a certain time and place therein mentioned before the justice who shall issue such summons, or before such other justice or justices of the peace of the same county, riding, division, liberty, city, borough, or place as may then be there, to answer to the said charge, and to be further dealt with according to law; and every such summons shall

How served.

be served by a constable or other peace officer upon the person to whom it is so directed by delivering the same to the party personally, or if he cannot conveniently be met with then by leaving the same with some person for him at his last or most usual place of abode; and the constable or other peace officer who shall have served the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose if necessary to the service of such summons (a); and if the person so served shall not be and appear before the justice or justices at the time and place mentioned in such summons, in obedience to the same, then it shall be lawful for such justice or justices to issue his or their warrant (D. ante), for apprehending the party so summoned, and bringing him before such justice or justices, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law: Provided always, that no objection shall be taken or allowed to any such summons or warrant for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examinations of the witnesses in that behalf, as hereinafter mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or admit him to bail, in manner hereinafter mentioned.

Sect. 10. That every warrant (B. ante), hereafter to be issued by any justice or justices of the peace to apprehend any person charged with any indictable offence, shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables or peace officers in the county or other district within which the justice or justices issuing such warrant has or have jurisdiction, or generally to all the constables or peace officers within such last-mentioned county or district, and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender, and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the justice or justices issuing the said warrant, or before some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the charge contained in the said information, and to be further dealt with according to law; and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until it shall be executed; and such warrant may be executed by apprehending the offender at any place within the county, riding, division, liberty, city, borough, or place within which the justice or justices issuing the same shall have jurisdiction, or in case of fresh pursuit at any place in the next adjoining county or place, and within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough, or place without having such warrant backed as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or other peace officers within the county or other district within which the justice or justices

1. When necessary, &c.  
Forms, &c.

11 & 12 Vict. c. 42.

If party summoned do not attend, justice may issue a warrant to compel attendance.

No objection allowed for alleged defect in form, &c.

Warrant to apprehend parties to be under hand and seal of justice.

How warrant to be directed and to whom.

When, how, and where warrant executed.

(a) The proof of the service must be to the satisfaction of the justices, and if they are satisfied, it would seem that there is jurisdiction to issue the

warrant, whether there was actual service or not. (See *Ex parte Hopwood*, 19 *Law. J. M. C.* 197.)

1. *When necessary, &c.*  
*Forms, &c.*

11 & 12 Vict. c. 42.

No objection  
 allowed for alleged  
 defect in form,  
 &c.

Summons to a  
 witness to attend  
 and give evidence.

If he do not obey  
 the summons,  
 then warrant.

In what cases  
 warrant in the  
 first instance.

Refusing to be  
 examined, im-  
 prisonment.

issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder or other peace officer for any parish, township, hamlet or place within such county or district to execute the said warrant within any parish, township, hamlet, or place situate within the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, in like manner as if such warrant were directed specially to such constable by name, and notwithstanding the place in which such warrant shall be executed shall not be within the parish, township, hamlet or place for which he shall be such constable, headborough, tithingman, borsholder or other peace officer: Provided always, that no objection shall be taken or allowed to any such warrant for any defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examinations of the witnesses in that behalf, as hereinafter mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or to admit him to bail, in manner hereinafter mentioned.

Sect. 16. That if it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such justice may and is hereby required to issue his summons (L. 1) to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place as shall then be there, to testify what he shall know concerning the charge made against such accused party; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode) it shall be lawful for the justice or justices before whom such person should have appeared, to issue a warrant (L. 2) under his or their hands and seals to bring and have such person at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant (L. 3) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last-mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just-excuse for such

refusal, any justice of the peace then present, and having there jurisdiction, may by warrant (L. 4) (a) under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

1. *When necessary, &c.*  
*Forms, &c.*

11 & 12 Vict. c. 42.

(L. 1.)

Summons of a witness.

To E. F. of [labourer].

Whereas information hath been laid before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of , that A. B. [ &c., as in the summons or warrant against the accused], and it hath been made to appear to me upon [oath] that you are likely to give material evidence for the [prosecution]: These are therefore to require you to be and to appear before me on next, at o'clock in the forenoon, at , or before such other justice or justices of the peace for the same county as may then be there, to testify what you shall know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Given under my hand and seal this day of , in the year of our Lord , at in the [county] aforesaid.

J. S. (L. S.)

(L. 2.)

Warrant where a witness has not obeyed a summons.

To the constable of , and to all other peace officers in the said [county] of .

Whereas information having been laid before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of , that A. B. [ &c., as in the summons]; and it having been made to appear to [me] upon oath that E. F. of [labourer], was likely to give material evidence for the prosecution, I did duly issue my summons to the said E. F., requiring him to be and appear before me on , at , or before such other justice or justices of the peace for the same county as might then be there, to testify what he should know respecting the said charge so made against the said A. B. as aforesaid: And whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said E. F.: And whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F. before me on , at o'clock in the forenoon at , or before such other justice or justices of the peace for the same [county] as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, this day of in the year of our Lord , at , in the [county] aforesaid.

J. S. (L. S.)

(L. 3.)

Warrant for a witness in the first instance.

To the constable of , and to all other peace officers in the said [county] of .

Whereas information hath been laid before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of , that [ &c., as in summons]; and it having been made to appear to [me] upon oath that E. F. of [labourer], is likely to give material evidence for the pro-

(a) See "Commitment," "Justices."



1. When necessary, &c.  
Forms, &c.
- 11 & 12 Vict. c. 42.
- secution, and that it is probable that the said E. F. will not attend to give evidence without being compelled so to do: These are therefore to command you to bring and have the said E. F. before [me] on at o'clock in the forenoon, at , or before such other justice or justices of the peace for the same [county] as may then be there to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.*
- Given under my hand and seal this day of , in the year of our Lord at .*
- J. S. (L. S.)

11 &amp; 12 Vict. c. 43.

Summons on information,

or complaint.

Corresponding provisions are enacted in respect of summary convictions by justices by the 11 & 12 Vict. c. 43, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to Summary Convictions and Orders," which consolidates the several statutes and parts of statutes relating to the duties of justices in respect of such summary convictions and orders, with additions and alterations deemed necessary, and defines the same by positive enactment. By sect. 1 it is enacted that in all cases where an information shall be laid before one or more of her Majesty's justices of the peace for any county, riding, division, liberty, city, borough or place within England or Wales, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such justice or justices for which he is liable by law, upon a summary conviction for the same before a justice or justices of the peace, to be imprisoned or fined, or otherwise punished, and also in all cases where a complaint shall be made to any such justice or justices upon which he or they have or shall have authority by law to make any order for the payment of money or otherwise, then and in every such case it shall be lawful for such justice or justices of the peace to issue his or their summons (A.) directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same justice or justices, or before such other justice or justices of the same county, riding, division, liberty, city, borough or place as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode; and the constable, peace officer, or person who shall serve the same in manner aforesaid, shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of the said summons: Provided always, that nothing herein mentioned shall oblige any justice or justices of the peace to issue any such summons in any case where the application for any order of justices is by law to be made *ex parte*: provided also, that no objection shall be taken or allowed to any information, complaint or summons for any alleged defect therein in substance or in form, or for any variance between such information, complaint or summons and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such, that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

(A.)

Summons to the defendant upon an information or complaint.

To A. B. of [labourer].

1. When necessary, &c.  
Forms, &c.

11 &amp; 12 Vict. c. 43.

Whereas information hath this day been laid [or complaint hath this day been made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, for that you [here state shortly the matter of the information or complaint] : These are therefore to command you, in her Majesty's name, to be and appear on \_\_\_\_\_ at \_\_\_\_\_ o'clock in the forenoon at \_\_\_\_\_, before such justices of the peace for the said county as may then be there, to answer to the said information [or complaint], and to be further dealt with according to law.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_ in the [county] aforesaid.

J. S. (L. S.)

Sect. 2. That if the person so served with a summons as aforesaid shall not be and appear before the justice or justices at the time and place mentioned in such summons, and it shall be made to appear to such justice or justices, by oath or affirmation, that such summons was so served what shall be deemed by such justice or justices to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such justice or justices, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their warrant (B.) to apprehend the party so summoned, and to bring him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough or place, to answer to the said information or complaint, and to be further dealt with according to law ; or, upon such information being laid as aforesaid for any offence punishable on conviction, the justice or justices before whom such information shall have been laid may, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information to his or their satisfaction, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant (C.) for apprehending the person against whom such information shall have been so laid, and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough or place, to answer to the said information, and to be further dealt with according to law ; or if, where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justice or justices then present that such summons was duly served upon such party a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such justice or justices of the peace to proceed *ex parte* to the hearing of such information or complaint, and to adjudicate thereon as fully and effectually, to all intents and purposes, as if such party had personally appeared before him or them in obedience to the said summons.

If summons be not obeyed, warrant.

Or warrant in the first instance.

Or if summons not obeyed, and it have been duly served, the justices may proceed *ex parte*.

(B.)

Warrant where the summons is disobeyed.

To the constable of \_\_\_\_\_, and to all other peace officers in the said [county] of \_\_\_\_\_.

Whereas on \_\_\_\_\_ last past information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the

1. When necessary, &c.  
Forms, &c.

11 & 12 Vict. c. 43.

said county of \_\_\_\_\_, for that A. B., [&c., as in the summons]: And whereas I then issued my summons unto the said A. B., commanding him, in her Majesty's name, to be and appear on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon at \_\_\_\_\_, before such justices of the peace for the said county as might then be there, to answer to the said information [or complaint], and to be further dealt with according to law: And whereas the said A. B. hath neglected to be or appear at the time and place so appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons hath been duly served upon the said A. B.: These are, therefore, to command you, in her Majesty's name, forthwith to apprehend the said A. B.; and to bring him before some one or more of her Majesty's justices of the peace in and for the said county, to answer to the said information [or complaint], and to be further dealt with according to law.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L. S.)

(C.)

Warrant in the first instance.

To the constable of \_\_\_\_\_, and to all other peace officers in the said [county] of \_\_\_\_\_.

Whereas information hath this day been laid before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, for that A. B. [here state shortly the matter of the information]; and oath being now made before me substantiating the matter of such information: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before some one or more of her Majesty's justices of the peace in and for the said county, to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_ in the [county] aforesaid.

J. S. (L. S.)

It was decided upon a similar provision in the Factory Act, that the question of reasonableness of notice or service is one solely for the discretion of the justices, and that no decision of theirs upon that point can be impugned (*Ex parte Hopwood*, 19 L. J. 197, M. C.); and upon this section a similar decision has been also given. (*In re Williams*, 21 L. J. 46, M. C.) Whether, if the defendant was not summoned at all, this fact might be shown by affidavit, and the conviction quashed on *certiorari*, has not been decided. (*R. v. Evans*, 19 L. J. M. C. 151.)

Form of warrant.

Sect. 3. That every such warrant to apprehend a defendant, that he may answer to any such information or complaint as aforesaid, shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables within the county or other district within which the justice or justices issuing such warrant hath or have jurisdiction, or generally to all the constables within such last-mentioned county or district; and it shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the constable or other person to whom it is directed to apprehend the said defendant, and to bring him before one or more justice or justices of the peace (as the case may require) of the same county, riding, division, liberty, city, borough or place, to answer to the said information or complaint, and to be further dealt with according to law; and that it shall not be necessary to make

such warrant returnable at any particular time, but the same may remain in full force until it shall be executed; and such warrant may be executed by apprehending the defendant at any place within the county, riding, division, liberty, city, borough or place within which the justices issuing the same shall have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining county or place within seven miles of the border of such first mentioned county, riding, division, liberty, city, borough or place, without having such warrant backed as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder or other peace officer for any parish, township, hamlet or place situate within the limits of the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, to execute such warrant in like manner as if such warrant were directed specially to such constable by name, and notwithstanding that the place in which such warrant shall be executed shall not be within the parish, township, hamlet, or place for which he shall be such constable, headborough, tithingman, borsholder or other peace officer (a): Provided always, that no objection shall be taken or allowed to any such warrant to apprehend a defendant so issued upon any such information or complaint as aforesaid under or by virtue of this act for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the informant or complainant as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so apprehended under such warrant has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit (D.) the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned; Provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) upon the back of the said recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

1. *When necessary, &c.*  
*Forms, &c.*

11 & 12 Vict. c. 43.

Where and how warrant may be executed.

No objection allowed for want of form in the warrant, or for any variance between it and evidence adduced;

but if the party charged is deceived by the variation, he may be committed or discharged upon recognizance;

but if he fail to reappear the justice may transmit the recognizance to the clerk of the peace.

(D.)

Warrant of committal for safe custody during an adjournment of the hearing.

To W. T., constable of \_\_\_\_\_, and to the keeper of the [house of correction] at \_\_\_\_\_.

Whereas on \_\_\_\_\_ last past information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for \_\_\_\_\_

(a) See provisions 11 & 12 Vict. c. 42; as to backing warrants, which are to be applied to warrants under this section, see "*Justices.*"

1. *When necessary, &c. Forms, &c.* the said [county] of \_\_\_\_\_, for that [ &c., as in the summons ]: And whereas the hearing of the same is adjourned to the \_\_\_\_\_ day of \_\_\_\_\_ instant at \_\_\_\_\_ o'clock in the forenoon at \_\_\_\_\_, and it is necessary that the said A. B. should in the meantime be kept in safe custody: These are therefore to command you the said constable, in her Majesty's name, forthwith to convey the said A. B. to the [house of correction] at \_\_\_\_\_, and there deliver him into the custody of the keeper thereof, together with this precept; And I hereby command you the said keeper to receive the said A. B. into your custody in the said house of correction, and there safely keep him until the \_\_\_\_\_ day of \_\_\_\_\_ instant, when you are hereby required to convey and have him the said A. B. at the time and place to which the said hearing is so adjourned as aforesaid, before such justices of the peace for the said [county] as may then be there, to answer further to the said information [or complaint], and to be further dealt with according to law.

11 & 12 Vict. c. 43.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L. S.)

(E.)

Recognizance for the appearance of the defendant where the case is adjourned, or not at once proceeded with.

: Be it remembered, that on \_\_\_\_\_, A. B. of \_\_\_\_\_, [labourer], and L. M. of \_\_\_\_\_, [grocer], personally came before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, and severally acknowledged themselves to owe to our sovereign lady the Queen the several sums following; (that is to say,) the said A. B. the sum of \_\_\_\_\_, and the said L. M. the sum of \_\_\_\_\_, of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. shall fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned, at \_\_\_\_\_, before me,

J. S.

The condition of the within-written recognizance is such, that if the said A. B. shall personally appear on the \_\_\_\_\_ day of \_\_\_\_\_ instant, at \_\_\_\_\_ o'clock in the forenoon at \_\_\_\_\_, before such justices of the peace for the said [county] as may then be there, to answer further to the information [or complaint] of C. D. exhibited against the said A. B., and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

Notice of such recognizance to be given to the defendant and his surety.

Take notice, that you A. B. are bound in the sum of \_\_\_\_\_, and you L. M. in the sum of \_\_\_\_\_, that you A. B. appear personally on \_\_\_\_\_ at \_\_\_\_\_ o'clock in the forenoon at \_\_\_\_\_, before such justices of the peace for the said county as shall then be there, to answer further to a certain information [or complaint] of C. D., the further hearing of which was adjourned to the said time and place, and unless you appear accordingly the recognizance entered into by you A. B., and by L. M. as your surety, will forthwith be levied on you and him.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

J. S.

(F.)

Certificate of non-appearance to be indorsed on the defendant's recognizance.

I hereby certify, that the said A. B. hath not appeared at the time and place in the said condition mentioned, but therein hath made default, by reason whereof the within-written recognizance is forfeited.

J. S.

Sect. 7. That if it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence in behalf of the prosecutor or complainant or defendant, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such information or complaint, such justice may and is hereby required to issue his summons (G. 1) to such person under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place as shall then be there, to testify what he shall know concerning the matter of the said information or complaint; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum was paid or tendered to him for his costs and expenses in that behalf,) it shall be lawful for the justice or justices before whom such person should have appeared, to issue a warrant (G. 2) under his or their hands and seals to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant (G. 3) in the first instance, and which, if necessary, may be backed as aforesaid.

1. *When necessary, &c.*  
*Forms, &c.*

11 & 12 Vict. c. 43.  
Power to justice to summon witnesses to attend and give evidence.

If summons be not obeyed, justices may issue warrant.

In certain cases may issue warrant in the first instance.

(G. 1.)

Summons of a witness.

To E. F. of in the said [county] of

Whereas information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of , for that [ &c., as in the summons]; and it hath been made to appear to me upon [oath] that you are likely to give material evidence on behalf of the [prosecutor, or complainant or defendant] in this behalf: These are therefore to require you to be and appear on , at o'clock in the forenoon at , before such justices of the peace for the said county as may then be there to testify what you shall know concerning the matter of the said information [or complaint].

Given under my hand and seal, this day of , in the year of our Lord , at , in the [county] aforesaid.

J. S. (L. S.)

(G. 2.)

Warrant where a witness has not obeyed a summons.

To the constable of , and to all other peace officers in the said [county] of

Whereas information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of ,

1. *When necessary, &c.* *Forms, &c.* for that [&c., as in the summons]; and it having been made to appear to me upon oath that E. F. of \_\_\_\_\_ in the said county [labourer], was likely to give material evidence on behalf of the [prosecutor], I did duly issue my summons to the said E. F., requiring him to be and appear on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon of the same day at \_\_\_\_\_, before such justices of the peace for the said county as might then be there, to testify what he should know concerning the said A. B. or the matter of the said information [or complaint]: And whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said E. F., and of a reasonable sum having been paid [or tendered] to him for his costs and expenses in that behalf: And whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse hath been offered for such neglect: These are therefore to command you to take the said E. F., and to bring and have him on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon at \_\_\_\_\_, before such justices of the peace for the said county as may then be there, to testify what he shall know concerning the matter of the said information [or complaint].

11 & 12 Vict. c. 43.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L. S.)

(G. 3.)

Warrant for a witness in the first instance.

To the constable of \_\_\_\_\_, and to all other peace officers in the [county] of \_\_\_\_\_.

Whereas information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, for that [&c., as in the summons]; and it being made to appear before me upon oath, that E. F. of \_\_\_\_\_, [labourer], is likely to give material evidence on behalf of the [prosecutor] in this matter, and it is probable that the said E. F. will not attend to give evidence without being compelled so to do: These are therefore to command you to bring and have the said E. F. before me on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon at \_\_\_\_\_, or before such other justices of the peace for the said county as may then be there, to testify what he shall know concerning the matter of the said information [or complaint].

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L. S.)

Venue in margin.

The warrant of a judge extends over all England, and is tested England; but that of a magistrate is tested of the particular county or precinct over which his jurisdiction extends. (4 *Bla. Com.* 291; *Fortes.* 143.)

Mr. Dalton says, "the warrant is the better if it bear date of the place where it is made." (*Dalt.* c. 169.)

And Lord Hale says, "the place, though it must be alleged in pleading, need not be expressed in the warrant." (2 *Hale*, 111.)

And Mr. Hawkins says, "It is safe, but perhaps not necessary, in the body of the warrant, to show the place where it was made; yet it seems necessary to set forth the county, in the margin at least, if it be not set forth in the body." (2 *Haw.* c. 13, s. 23.)

In the case of an act of parliament, it is said, that if the act direct that a justice shall grant a warrant, and do not say to whom it shall be directed, by consequence of law, it must be directed to the constable, and it cannot be directed to the sheriff, unless such power be given in the act. (*Reg. v. Wyatt*, 2 *Lord Raym.* 1129; 2 *Salk.* 381, *S. C.*; *sed vide Blatcher v. Kemp*, 1 *H. Bla.* 15.)

Name of offender.

The warrant ought regularly to mention the name of the party to be attached, and must not be left in general, or with blanks to be

filled up by the party afterwards. (2 *Hale*, 114; *Dalt.* c. 169.) And the same rule applies in civil cases. (See *Burslem v. Fern*, 2 *Wils.* 47; *Housin v. Barrow*, 6 *T. R.* 122.)

If the name of the party to be arrested be unknown, the warrant may be issued against him by the best description the nature of the case will allow, as "the body of a man whose name is unknown, but whose person is well known, and who is employed as the driver of cattle, and wears a badge, No. 573." (1 *Hale*, 577.)

A warrant to apprehend "— *Hood* (omitting the christian name) of B., in the parish of F., by whatsoever name he may be called or known, the son of *Samuel Hood*, to answer, &c.," was held defective, as omitting the christian name, assigning no reason for the omission, nor giving any distinguishing particulars of the individual; and the conviction of prisoner, because he had resisted, was held wrong. (*R. v. Hood*, 1 *M. & M.* 281.)

If there be a mistake in the name of the supposed offender, or if the name of the officer be inserted without authority, and after the issuing of the warrant, or if the officer exceed the limits of his authority, and be killed, this will amount to no more than manslaughter in the person whose liberty is thus invaded. (*Fost.* 312; *Cole v. Hindson*, 6 *T. R.* 236.)

But if the warrant be filled up by the magistrate before he issues it, though after he signed it, the proceeding is regular, and killing the officer endeavouring to arrest the party is murder. (*R. v. Inhabitants, Winwick*, 8 *T. R.* 455; 2 *Leach*, 929.)

A general warrant, upon a complaint of robbery, to apprehend all persons suspected, and to bring them before a justice, hath been ruled void; and false imprisonment lies against him that issues such a warrant. (1 *Hale*, 580; 2 *Hale*, 112.) So, a general warrant to apprehend the authors, printers, and publishers of a libel, without naming them, is illegal. (*Money v. Leach*, 1 *Bla. Rep.* 555; 19 *Howell's St. Tr.* 1002.)

General warrants, to take up loose, idle, and disorderly people, (*Money v. Leach*, 3 *Burr.* 1766. See *ante*, "Vagrants,") and search-warrants, (2 *Haw. c.* 13, s. 11,) are perhaps the only exceptions to this rule.

Regularly, the warrant, if it be for the peace or good behaviour, or the like, where sureties are to be found or required, ought to contain the special cause and matter whereupon it is granted, to the intent that the party upon whom it is to be served may provide his sureties ready, and take them with him to the justice to be bound for him; but if the warrant be for treason, murder, or felony, or other capital offence, or for great conspiracies, rebellious assemblies, or the like, it hath been said that it needeth not to contain any special cause, but the warrant of the justice may be to bring the party before him, to make answer to such things or matters generally as shall be objected against him on the Queen's behalf. (*Dalt.* c. 169; 2 *Haw. c.* 13, s. 25; 2 *Hale*, 111; 1 *Chit. C. L.* 41.)

But *Mr. Lambard* says, "every warrant made by a justice of the peace ought to comprehend the special matter upon which it proceedeth; even as all the king's writs do bear their proper cause in their mouth with them: and, as for the form that is commonly used, to answer to such things as shall be objected, and such like, they were not fetched out of the old learned precedents, but lately brought in by such as either knew not, or cared not, what they writ." (*Lamb.* 87. And see 2 *Hale*, *P. C.* 111; 1 *Chit. C. L.* 41.)

And in the case of *Candle v. Seymour* (1 *Gale & D.* 889; 1 *A. & Ell. N. S.* 889, *S. C.*), it was held that the warrant should state the specific offence with which the party is charged. And the following form of warrant, viz.—"I do hereby, in her Majesty's name, command you and every of you, upon sight hereof, to apprehend and bring

1. When necessary, &c.  
Forms, &c.

11 & 12 Vict. c. 43.

General warrant.

Statement of offence.



1. *When necessary, &c.*  
*Forms, &c.*

11 & 12 Vict. c. 43.

before me, one of her Majesty's justices of the peace, the body of (the plaintiff), of whom you shall have notice to answer to all such matters and things as on her Majesty's behalf shall be objected against him on oath by *Mary Ann Warner*, of &c., for an assault committed upon her, upon the 24th instant," &c., was in that case held bad.

For the concise mode of describing the offence, see "*Commitment for safe Custody.*"

The warrant need not be returnable at a place certain. (4 *Bla. Com.* 291.)

Date and place.

It ought to set forth the year and day wherein it is made, that, in an action brought upon an arrest by virtue of it, it may appear to have been prior to such arrest; and also, in case where the statute directeth the prosecution to be within such a time, that it may appear that the prosecution is commenced within such time limited: likewise, where a penalty is given to the poor of the parish where the offence shall be committed, or the like, it ought to specify the place where the offence was committed. (2 *Haw. c.* 13, s. 22.)

And it is in general better to state the place where the warrant is made. (*Dalt. c.* 169.)

Magistrates should be together when determining on granting warrant.

In a case of a warrant by more than one justice, in determining whether they shall issue it, the justices must, it seems, be acting together, but it is not necessary that all of them should be present when each executes it. (See *Battye v. Gresley*, 8 *East*, 319.)

Whether a magistrate has a right to withdraw his warrant.

It was made a question, but not decided, in *Barrons v. Luscombe*, (3 *Ad. & Ell.* 589; 5 *Nev. & M.* 330,) whether magistrates have, under any circumstances, a right to withdraw a warrant after they have once issued it. In that case two justices allowed the accounts of overseers going out of office. By a subsequent warrant, reciting that on the accounts a certain balance appeared to be in the hands of one of the overseers, which he had neglected and refused to pay, they required the succeeding overseers to distrain for the balance on his goods under stat. 50 *Geo.* 3, c. 49, s. 1. Afterwards a doubt being raised whether the balance was correctly ascertained, they signed an order to the overseers to suspend and not execute the warrant of distress. This was delivered to one of the overseers, who nevertheless distrained, an action of trespass being brought against him. It was held that the justices had no power to suspend the order, on account of a doubt as to the correctness of the balance; that the defendant therefore was acting under a legal warrant, and was entitled to a demand of a copy of the warrant under stat. 24 *Geo.* 2, c. 44, s. 6. (See *R. v. Justices of Cheshire*, 5 *B. & Adol.* 439; 2 *N. & M.* 727, *S. C.*)

## II. Mode of executing Warrant, and herein of Breaking open Doors, and when Violence is offered.

The observations already made under title "*Arrest*," as to the mode of arresting a party, will for the most part here apply.

Execution to be soon as possible.

The officer to whom a warrant is directed and delivered ought, with all speed and secrecy, to find out the party, and then to execute the warrant. (*Dalt. c.* 169.)

When the party named in the warrant employs others to assist him, he must be so near as to be acting in the arrest, in order to render it legal. (*Blatch v. Archer*, *Cowp.* 66.)

Time of executing.

An arrest in the night is good, both at the suit of the queen and of the subject, else the party may escape. (9 *Rep.* 66.)

By 29 *Car.* 2, c. 7, s. 6, an arrest for treason, felony, or breach of the peace, may be made on Sunday. (See "*Lord's Day.*")

In *Mayhew v. Barker*, (8 *T. R.* 110,) it was held that a warrant to

arrest the party, to the end that he may become bound to appear at the next sessions, &c., means the next sessions after the arrest, and not after the date of the warrant; therefore the officer executing it may justify an arrest after the sessions next ensuing the date of the warrant.

A person may, it seems, be twice apprehended under the same warrant, if the purposes of the warrant have not been effected. (*Dickenson v. Brown, Peake's Rep.* 234.)

A private person cannot raise power to arrest or detain a felon. (1 *Hale*, 601.)

But any justice, or the sheriff, may take of the county any number that he shall think meet, to pursue, arrest, and imprison traitors, murderers, robbers, and other felons, or such as do break or go about to break or disturb the king's peace; and every man, being required, ought to assist and aid them, on pain of fine and imprisonment. (*Dalt.* c. 171.)

Taking the power of the county.

It is not justifiable for a justice, sheriff, or other officer, to assemble the *posse comitatus*, or raise a power or assembly of people, upon their own heads, without just cause. (*Id.*)

But where a justice, sheriff, or other officer, is enabled to take the power of the county, it seemeth they may command and ought to have the aid and attendance of all knights, gentlemen, yeomen, husbandmen, labourers, tradesmen, servants, and apprentices, and of all other persons being above the age of fifteen years, and able to travel. (*Id.*)

Women, ecclesiastical persons, and such as be decrepit or diseased, shall not be compelled to attend them. (*Id.*)

And, in such case, it is referred to the discretion of the justice, sheriff, or other officer, what number they will have to attend on them, and how and after what manner they shall be armed or otherwise furnished. (*Id.*)

If a warrant be directed to the sheriff, he may command his bailiff, under-sheriff, or other sworn and known officer, to serve it, without writing any precept. But if he will command another man that is no such officer to serve it, he must give him a written precept; otherwise an action of false imprisonment will lie. (*Lamb.* 89.)

Sheriff may depute.

But every other person to whom it is directed must personally execute it; yet it seems that any one may lawfully assist him. (2 *Haw. c.* 13, s. 29.)

The directions of the warrant must be strictly observed, or the party executing it will not be justified in his acts, and may be treated as a trespasser; as, if the warrant be to arrest A., and he arrest B. (See *Com. Dig. Imprisonment (B.)*; 2 *Haw. c.* 13, s. 31; *Price v. Messenger*, 2 *B. & P.* 162; *Bell v. Oakley*, 2 *M. & Sel.* 261. See also "*Constable.*")

Directions of warrant to be observed strictly.

A person sworn and commonly known, and acting within his own precinct, need not show his warrant, but he ought to acquaint the party with the substance of it. (2 *Haw. c.* 13, s. 28.)

Showing the warrant.

An officer giveth sufficient notice what he is when he saith to the party, "*I arrest you in the queen's name*;" and, in such case, the party at his peril ought to obey him, though he knoweth him not to be an officer; and if he have no lawful warrant, the party grieved may have his action of false imprisonment. (*Dalt.* c. 169.)

Or giving notice of.

But the learned editor of *Hale's* history observes hereupon, that the books referred to intend the general warrant constituting such person an officer, as a bailiff or the like, in a civil action; though it may be otherwise in case of felony, because, in such case, a private person may arrest a felon without any warrant at all. (2 *Hale*, 116; 1 *Id.* 458, *notis.*)

In *Hall v. Roche*, (8 *T. R.* 188,) the doctrine that even a known officer is not obliged to show his authority when demanded, was con-

2. *Mode of executing, &c.* considered as dangerous, because it may affect the party criminally in case of resistance, and, if homicide ensue, the legality of the warrant enters materially into the merits of the question. And Lord *Kenyon* observed, that he did not think a person is bound to take it for granted, that another who says he has a warrant against him, without producing it, speaks truth.
- What an arrest. A warrant was issued to apprehend the plaintiff upon a charge of a conspiracy; a constable went to the plaintiff's house with the warrant, showed it to him, allowed him to take a copy of it, and then was accompanied by the plaintiff to the magistrate, who, after examining him, dismissed him. Trespass for assault and false imprisonment was brought against the magistrate, and a verdict was given for the defendant. Upon showing cause against a rule for setting aside the verdict, Sir *J. Mansfield*, C. J., held, that, as the plaintiff went voluntarily before the magistrate, the warrant being made no other use of than as a summons, this was no arrest, and therefore the verdict was right. (*Arrowsmith v. Le Mesurier*, 2 N. R. 211. See *Russen v. Lucas*, 1 C. & P. 153.)
- And if the constable come unto the party and require him to go before the justice, this is no arrest or imprisonment. (*Dalt. c. 170.*)
- For bare words will not constitute an arrest without laying hold of the party, or otherwise restraining his liberty. (*Jenner v. Sparkes*, 1 Salk, 79; 6 Mod. 173, S. C. And see cases collected in 1 Chit. Arch. Prac. 7th edit. 532.)
- Must show warrant if he act out of precinct, or not sworn and known. But if he act out of his precinct, or be not sworn and commonly known, he must show his warrant if demanded. (2 Haw. c. 13, s. 28.) Otherwise the party may make resistance, and needs not to obey it. (*Dalt. c. 169.*)
- If the constable hath no warrant, but doth it by virtue of his office as a constable, it is sufficient to notify that he is a constable, or that he arrests in the queen's name. (1 Hale, 589.)
- Constable not to part with warrant. In no case is a constable required to part with the warrant out of his own possession; for that is his justification. (1 East's P. C. 319; *Reg. v. Wyatt*, 2 Ld. Raym. 1196; 24 Geo. 2, c. 44, s. 6.)
- Breaking open doors. As to the case of breaking open doors, in order to apprehend offenders, it is to be observed, that the law doth never allow of such extremities but in cases of necessity; and therefore no one can justify breaking open another's door to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. (2 Haw. c. 14, s. 1; *Lannock v. Brown*, 2 B. & Ald. 592.)
- Such request is undoubtedly necessary in all cases where the warrant is for a misdemeanor. (*Lannock v. Brown*, 2 B. & Ald. 592. And see *Burdett v. Abbott*, 14 East, 163.)
- No particular form necessary. No precise form of words is required in a case of this kind: it is sufficient that the party hath notice that the officer cometh not as a mere trespasser, but claiming to act under a proper authority, provided that the officer has a legal warrant. (*Post*, 137.)
- When allowed. But where a person authorised to arrest another, who is sheltered in a house, is denied quietly to enter it, in order to take him, it seems generally to be agreed that he may justify breaking open the doors in the following instances:—
- On a *capias* or indictment, or for sureties of peace, &c., or warrant. (1.) Upon a *capias* grounded on an indictment for any crime whatsoever; or upon a *capias* from the Chancery or King's Bench, to compel a man to find sureties for the peace or good behaviour, or even upon a warrant from a justice of peace for such purpose. (2 Haw. c. 14, s. 3.)
- Contempt of court. Where a party has been guilty of a contempt of court, and process has been issued against him for it, outer doors may be broken open to execute it. (*Seyman's case*, Cro. Eliz. 909; 5 Rep. 92 c. And see *Burdett v. Abbott*, 14 East, 157.)

(2.) When one known to have committed a treason or felony, or to have given another a dangerous wound, is pursued either with or without a warrant by a constable or private person; but where one lies under a probable suspicion only, and is not indicted, it seems the better opinion at this day, Mr. *Hawkins* says (c. 14, s. 7), that no one can justify the breaking open doors in order to apprehend him. And this opinion he founds on *Coke's 4 Inst.* 177, and *Hale's Pleas of the Crown*, 91.

2. *Mode of executing, &c.*

Pursuit for treason or felony.

But upon a warrant for probable cause of suspicion of felony, the person to whom such warrant is directed may break open doors to take the person suspected, if upon demand he will not surrender himself, as well as if there had been an express and positive charge against him; and so (he says) hath the common practice obtained, notwithstanding the contrary opinion of Lord *Coke*; for, in such case, the process is for the king, and therefore a *non omittas* is implied. (1 *Hale*, 580, 583; 2 *Hale*, 117.)

By warrant on suspicion only.

And, as he may break open such person's own house, so much more may he break open the house of another to take him; for so the sheriff may do upon a civil process; but then he must at his peril see that the felon be there; for, if the felon be not there, he is a trespasser to the stranger whose house it is. (2 *Hale*, 117; *Seyman's case*, 5 *Rep.* 92 a.)

In house of another.

But it seems that he that arrests as a *private man*, barely upon suspicion of felony, cannot justify the breaking open of doors to arrest the party suspected, but he doth it at his peril; that is, if in truth he be a felon, then it is justifiable, but if he be innocent, but upon a reasonable cause suspected, it is not justifiable. (1 *Hale*, 82.)

Distinction between private persons and officers.

But a *constable* in such case may justify, and the reason of the difference is this: because in the former case it is but a thing permitted to private persons to arrest for suspicion, and they are not punishable if they omit it; and therefore they cannot break open doors; but in case of a constable, he is punishable if he omit it upon complaint. (2 *Hale*, 92.)

And, in general, an officer, upon any warrant from a justice, either for the peace, or good behaviour, or in any case where the king is party, may by force break open a man's house, to arrest the offender. (*Dalt.* c. 169.)

Warrant where king a party.

It is justifiable for a private person to break and enter the house of another, and imprison his person, in order to prevent him murdering his wife. (*Handcock v. Baker*, 2 B. & P. 260.)

To prevent murder.

(3.) Where forcible entry or detainer is found by inquisition before justices of the peace, or appears on their view. (2 *Haw.* c. 14, s. 6.)

Forcibly entry, &c.

(4.) On a *capias utlagatum*, or *capias pro fine*. (*Id.* s. 2.)

Capias utlagatum, &c.

(5.) Where an affray is made in a house, in the view or hearing of the constable, he may break open the doors to take them. (1 *Haw.* c. 63, s. 16; 2 *Haw.* c. 14, s. 8.)

Affray in house.

(6.) If there be disorderly drinking or noise in a house at an unreasonable time of night, especially in inns, taverns, or ale-houses, the constable, or his watch, demanding entrance, and being refused, may break open the doors, to see and suppress the disorder. (2 *Hale*, 95.)

Disorderly house, &c.

(7.) Wherever a person is lawfully arrested for any cause, and afterwards escapes, and shelters himself in a house. (2 *Haw.* c. 14, s. 9.)

Escape after arrest.

(8.) But upon a general warrant, without expressing any felony or treason, or surety of the peace, the officer cannot break open a door. (1 *Hale*, 584.)

On a general warrant not allowed.

(9.) Neither ought doors to be broken open to take a person, who is required to take certain oaths by virtue of a statute, because in such case the warrant is not grounded on a precedent offence. (2 *Haw.* c. 14, s. 11; 12 *Rep.* 131.)

Nor on warrant not granted on precedent offence.

(10.) In a civil suit, the officer cannot justify the breaking open an

In civil process.

2. Mode of  
executing, &c.

outward door or window, in order to execute process. If he doth, he is a trespasser. But if he findeth the outward door open, and entereth that way, or if the door be opened to him from within, and he entereth, he may break open inward doors, if he findeth that necessary, in order to execute his process. (*Fost.* 319. See *Tidd's Prac.* 9th ed. 1012.)

For a man's house is his castle, for safety and repose to himself and family; but if a stranger, who is not of the family, upon a pursuit, taketh refuge in the house of another, this rule doth not extend to him,—it is not *his* castle, he cannot claim the benefit of sanctuary therein. (*Fost.* 320. See *Seyman's case, supra.*)

And it is always to be remembered that this rule must be confined to the case of arrest upon process in civil suits only; for, where a felony hath been committed, or a dangerous wound given, or even where a minister of justice cometh armed with process founded on a breach of the peace, the party's own house is no sanctuary for him: in these cases, the justice which is due to the public must supersede every pretence of private inconvenience. (*Fost.* 320.)

Breaking out to  
regain liberty.

(11.) Finally, in all these cases, if an officer, to serve any warrant, enter into a house, the doors being open, and then the doors are locked upon him, he may break them open, in order to regain his liberty. (2 *Haw. c.* 14, s. 11.)

Killing in the  
arrest or pursuit  
in misdemeanor.

If there be a warrant against a person for a trespass or breach of the peace, and he fly and will not yield to the arrest, or being taken, make his escape, if the officer kill him, it is murder. (2 *Hale*, 117; 1 *East's P. C.* 302.)

An assault with  
intent to escape.

But, if such person, either upon the attempt to arrest, or after the arrest, assault the officer, to the intent to make his escape from him, and the officer, standing upon his guard, kill him, this is no felony: for he is not bound to go back to the wall, as in common cases of *se defendendo*, for the law is his protection. (2 *Hale*, 118; 1 *East's P. C.* 302.)

Flight for felony.

But where a warrant issueth against a person for felony, and either before or after arrest he flies and defends himself with stones or weapons, so that the officer must give over his pursuit, or otherwise cannot take him without killing him, if he kill him, it is no felony. And the same law is for a constable that doth it by virtue of his office, or on hue and cry. (*Id.*)

But then there must be these cautions: 1. He must be a lawful officer; or there must be a lawful warrant. 2. The party ought to have notice of the reason of the pursuit,—namely, because a warrant is against him. 3. It must be a case of necessity, and that not such a necessity as in the former case, where an assault is made upon the officer; but this is the necessity,—namely, that he cannot otherwise be taken. (2 *Hale*, 119; 1 *East's P. C.* 312.)

After indictment.

If an innocent person be indicted of a felony, where in truth no felony was committed, and will not suffer himself to be arrested by the officer who has a warrant for that purpose, he may lawfully be killed by him, if he cannot otherwise be taken; for there is a charge against him upon record, to which, at his peril, he is bound to answer. (1 *Haw. c.* 28, s. 12. See "*Homicide.*")

Private person.

But though a private person may arrest a felon, and if he fly, so as he cannot be taken without he be killed, it is excusable in this case for the necessity, yet it is at his peril that the party be a felon; for if he be innocent of the felony, the killing (at least before the arrest), seems at least manslaughter; for an innocent person is not bound to take notice of a private person's suspicion. (2 *Hale*, 119.)

Opposing the  
execution.

It is an offence of a very high nature to oppose one who lawfully endeavours to arrest another for treason or felony; and it seems that a third person who so opposes an arrest for treason, whereof he knows the party to have been guilty, is thereby guilty of the treason: and

that he who so opposes an arrest for felony is an accessory to the felony. (1 *Haw. c. 17, s. 1.* See "*Escape*," "*Rescue*.")

2. *Mode of executing, &c.*

The party arrested should not be treated with any unnecessary harshness, beyond what is actually necessary for his safe custody; and therefore it has been held that a constable has no right to handcuff a person whom he has apprehended on a suspicion of felony, unless he have attempted to escape, or it be necessary to prevent him from escaping. (*Wright v. Court, 4 B. & Cres. 596; 6 D. & R. 623; 2 C. & P. 232, S. C.*)

Treatment of prisoner.  
Handcuffs.

It hath been holden, that if a constable, after he hath arrested the party by force of a warrant, suffer him to go at large upon his promise to come again and find sureties, he cannot afterwards arrest him by force of the same warrant: however, if the party return, and put himself again under the custody of the constable, it seems that, it may be probably argued, that the constable may lawfully detain him, and bring him before the justice in pursuance of such warrant; but in this the law doth not seem to be clearly settled. (2 *Haw. c. 13, s. 9.*) But if the party arrested do escape, the officer, upon fresh suit, may take him again and again, so often as he escapeth, although he were out of view, or that he shall fly into another town or county. (*Dalt. c. 169.* See "*Arrest*.")

Retaking after voluntary escape.

### III. What to be done after the Arrest.

We have already considered what is to be done after the arrest, see "*Arrest*."

What to be done after arrest.

If the arrest be by virtue of a warrant, when the officer hath made the arrest, he is forthwith (see *Wright v. Court, 4 B. & Cres. 596*,) to bring the party, according to the direction of the warrant. If it be to bring the party before the justice who granted the warrant specially, then the officer is bound to bring him before the same justice; but if the warrant be to bring him before any justice of the county, then it is in the election of the officer to bring him before what justice he thinks fit, and not in the election of the prisoner. (*Foster's case, 5 Rep. 59 b.; 1 Hale, 582; 2 Hale, 112.*)

By an officer by warrant.

But if the time be unseasonable, as in or near the night, whereby he cannot attend the justice, or if there be danger of a present rescue, or if the party be sick, he may secure him in the stocks, or in a house, till the next day, or such time as it may be reasonable to bring him. (2 *Hale, 120.* See *Wright v. Court, supra.* "*Arrest*.")

And when he hath brought him to the justice, yet he is in law still in his custody till the justice discharge, or bail, or commit him. (*Id.*)

But, it is said, the constable is not obliged to return the warrant itself, but may keep it for his own justification, in case he should be questioned for what he had done, but only to return what he has done upon it. (*R. v. Wyat, 2 Ld. Raym. 1196; 1 East's P. C. 319.*)

Returning the warrant.

And this seems to be implied in the 24 Geo. 2, c. 44. s. 6, which enacts, that no action shall be brought against any constable, headborough, or other officer, or against any person or persons acting by his order and in his aid, for anything done in obedience to any warrant under the hand or seal of any justice of the peace, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, her, or their attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand, &c. (See this enactment, and the decisions under it, title "*Constable*.")

## Warrant of Distress by Justices.

[7 & 8 Will. 3, c. 34; 1 Geo. 1, st. 2, c. 6; 27 Geo. 2, c. 20; 7 & 8 Geo. 4, c. 17; 11 & 12 Vict. c. 43.]

I. *Generally as to when and in what manner to be granted, and the forms.*

II. *In respect of distress for rent.*

IT has been found convenient to restrict the subject respecting distress for rent to that part only of the law affecting it, by which justices and sheriffs are empowered to act by virtue of their offices. The rest of the law on this head, though of general use, does not relate to the office of justice of the peace or of sheriff.

When it may be granted.

A distress by warrant of a magistrate is usually issued for the purpose of compelling payment of a penalty or costs, and payment also of a debt or duty.

A magistrate has no power whatever at common law to issue such a warrant, his authority for that purpose can only be derived from act of parliament, and then only in case it is expressly given. He therefore must be guided in his proceedings in this respect by the express enactment of the legislature.

As to hearing informations for offences punishable on summary conviction, see "*Justices.*"

11 & 12 Vict. c. 43.

The powers of issuing warrants of distress to enforce pecuniary penalties and costs adjudged by justices either by order or for offences punishable on summary conviction are now regulated by 11 & 12 Vict. c. 43.

Costs.  
Orders and convictions.

By sect. 18 of that act, justices are empowered in all cases of summary conviction, or of orders made by them, in their discretion, to award and order, in and by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as shall seem just. And when the information or complaint is dismissed, they may in the order of dismissal award and order that the prosecutor or complainant respectively shall pay to the defendant such costs as shall seem just, and the sums so allowed for costs shall in all cases be specified in the conviction or order, or order of dismissal, and be recovered in the same manner as any penalty or sum of money adjudged to be paid by the conviction or order, and in cases where there is no penalty or sum then the costs shall be recoverable by distress and sale of the goods and chattels of the party, &c.

Power to justice to issue warrant of distress.

By sect. 19, where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorising such conviction or order such penalty, compensation, or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases where by the statute in that behalf no mode of raising or levying such penalty, compensation, or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the justice or justices making such conviction or order, or for any justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of distress (N. 1, 2) for the purpose of levying the same, which said warrant of distress shall be in writing under the hand and seal of the justice

making the same ; and if after delivery of such warrant of distress to the constable or constables to whom the same shall have been directed to be executed sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then, upon proof alone being made on oath of the handwriting of the justice granting such warrant before any justice of any other county or place, such justice of such other county or place shall thereupon make an indorsement (N. 3) on such warrant, signed with his hand, authorising the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty or sum aforesaid, and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place : Provided always, that whenever it shall appear to any justice of the peace to whom application shall be made for any such warrant of distress as aforesaid that the issuing thereof would be ruinous to the defendant and his family, or wherever it shall appear to such justice, by the confession of the defendant or otherwise, that he hath no goods or chattels whereon to levy such distress, then and in every such case it shall be lawful for such justice, if he shall deem it fit, instead of issuing such warrant of distress, to commit such defendant to the house of correction, or if there be no house of correction within his jurisdiction then to the common gaol, there to be imprisoned, with or without hard labour, for such time and in such manner as by law such defendant might be so committed in case such warrant of distress had issued, and no goods or chattels could be found whereon to levy such penalty or sum and costs aforesaid.

11 & 12 Vict.  
c. 43.

How warrant to  
be backed.

Where the issuing  
a warrant would  
be ruinous to  
defendant, or  
where there are  
no goods, justice  
may commit him  
to prison.

(N. 1.)

Warrant of distress upon a conviction for a penalty.

*To the constable of \_\_\_\_\_, and to all other peace officers in the said [county]  
of \_\_\_\_\_,*

*Whereas A. B., late of \_\_\_\_\_ [labourer], was on this day [or on  
last past] duly convicted before the undersigned, [one] of her Majesty's justices of  
the peace in and for the said county of \_\_\_\_\_, for that [stating the offence as  
in the conviction], and it was thereby adjudged that the said A. B. should for  
such his offence forfeit and pay [&c., as in the conviction], and should also pay  
to the said C. D. the sum of \_\_\_\_\_ for his costs in that behalf ; and it was  
thereby ordered that if the said several sums should not be paid [forthwith] the  
same should be levied by distress and sale of the goods and chattels of the said  
A. B. ; and it was thereby also adjudged that in default of sufficient distress  
the said A. B. should be imprisoned in the [house of correction] at  
in the said county [and there kept to hard labour] for the space of \_\_\_\_\_  
unless the said several sums, and all costs and charges of the said distress, and  
of the commitment and conveying of the said A. B. to the said [house of cor-  
rection], should be sooner paid : (\*) And whereas the said A. B. being so convicted  
as aforesaid, and being [now] required to pay the said sums of \_\_\_\_\_ and  
\_\_\_\_\_ hath not paid the same or any part thereof, but therein hath made  
default : These are therefore to command you, in her Majesty's name, forthwith  
to make distress of the goods and chattels of the said A. B. ; and if within the  
space of \_\_\_\_\_ days next after the making of such distress the said sums,  
together with the reasonable charges of taking and keeping the distress, shall  
not be paid, that then you do sell the said goods and chattels so by you dis-  
trained, and do pay the money arising by such sale unto \_\_\_\_\_ the clerk of  
the justices of the peace for the division of \_\_\_\_\_ in the said [county] that  
he may pay and apply the same as by law is directed, and may render the  
overplus, if any, on demand, to the said A. B. ; and if no such distress can be*



## Warrant of Distress by Justices.

11 & 12 Vict.  
c. 43.

*found, then that you certify the same unto me, to the end that such further proceedings may be had thereon as to the law doth appertain.*

*Given under my hand and seal, this            day of            in the year of our*  
*Lord            , at            , in the [county] aforesaid.*

*J. S. (L. S.)*

(N. 2.)

Warrant of distress upon an order for the payment of money.

*To the constable of            and to all other peace officers in the said [county]*  
*of            .*

*Whereas on            last past, a complaint was made before the undersigned, [one] of her Majesty's justices of the peace in and for the said county of            for that [&c., as in the order], and afterwards, to wit, on            at            the said parties appeared before me [or as in the order], and thereupon having considered the matter of the said complaint, I adjudged the said A. B. to [pay to the said C. D. the sum of            on or before the            then next], and also to pay to the said C. D. the sum of            for his costs in that behalf; and I thereby ordered that if the said several sums should not be paid on or before the said            then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the [house of correction] at            in the said county [and there kept to hard labour] for the space of            unless the said several sums, and all costs and charges of the distress, [and of the commitment and conveying of the said A. B. to the said house of correction,] should be sooner paid: (\*) And whereas the time in and by the said order appointed for the payment of the said several sums of            and            hath elapsed, but the said C. D. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of            days after the making of such distress the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale, unto            the clerk of the justices of the peace for the division of            in the said [county] that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.*

*Given under my hand and seal, this            day of            , in the year of our*  
*Lord            , at            , in the [county] aforesaid.*

*J. S. (L. S.)*

(N. 3.)

Endorsement in backing a warrant of distress.

*to wit: Whereas proof upon oath hath this day been made before me, one of her Majesty's justices of the peace in and for the said county of            that the name of J. S. to the within warrant subscribed is of the handwriting of the justice of the peace within mentioned: I do therefore authorise W. T., who bringeth to me this warrant, and all other persons to whom this warrant was originally directed, or by whom the same may be lawfully executed, and also all constables and other peace officers of the said [county] of            to execute the same within the said county of            .*

*Given under my hand, this            day of            18            .*

*J. B.*

Justice after issuing warrant, may suffer defendant to go at large, or order him into

Sect. 20. In all cases where a justice of the peace shall issue any such warrant of distress it shall be lawful for him to suffer the defendant to go at large, or verbally or by a written warrant in that behalf, to order the defendant to be kept and detained in safe custody

until return shall be made to such warrant of distress, unless such defendant shall give sufficient security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him at the time and place appointed for the return of such warrant of distress, or before such other justice or justices for the same county, riding, division, liberty, city, borough, or place as may then be there, &c.

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custody, until  
return be made,  
unless he gives  
security by recog-  
nizance.

Sect. 21. If at the time and place appointed for the return of any such warrant of distress the constable who shall have had the execution of the same shall return (N. 4) that he could find no goods or chattels, or no sufficient goods or chattels, whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the justice of the peace before whom the same shall be returned to issue his warrant of commitment (N. 5) under his hand and seal, directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such constable to convey such defendant to the house of correction, or if there be no house of correction then to the common gaol of the county, riding, division, liberty, city, borough, or place for which such justice shall then be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such house of correction or gaol, and there to imprison him or to imprison him and keep him to hard labour, in such manner and for such time as shall have been directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice shall think fit so to order, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

In default of suffi-  
ciency of distress,  
justice may com-  
mit defendant to  
prison.

(N. 4.)

Constable's return to a warrant of distress.

*I, W. T., constable of                      in the [county] of                      do hereby certify to J. S., esq., one of her Majesty's justices of the peace for the said county, that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.*

*Witness my hand, this                      day of                      , 18                      .*

W. T.

(N. 5.)

Warrant of commitment for want of distress.

*To the constable of                      and to the keeper of the [house of correction] at                      , in the said [county] of                      .*

*Whereas [&c., as in either of the foregoing distress warrants, N. 1, 2, to the asterisk (\*), and then thus]: And whereas afterwards, on the day of                      in the year aforesaid, I, the said justice, issued a warrant to the constable of                      commanding him to levy the said sums of                      and by distress and sale of the goods and chattels of the said A. B.: And whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: These are therefore to command you the said constable of                      to take the said A. B., and him safely to convey to the [house of correction] at                      aforesaid, and there deliver him to the said keeper, together with this precept; and I do hereby com-*

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*mand you the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of unless the said several sums, and all the costs and charges of the said distress [and of the commitment and conveying of the said A. B. to the said house of correction] amounting to the further sum of shall be sooner paid unto you the said keeper ; and for your so doing this shall be your sufficient warrant.*

*Given under my hand and seal, this      day of      , in the year of our Lord,      at      , in the [county] aforesaid.*  
J. S. (L. S.)

In all cases of penalties, convictions, or orders, where the statute provides no remedy in default of distress, justice may commit defendant to prison.

Sec. 22. Whereas by some acts of parliament justices of the peace are authorised to issue warrants of distress to levy penalties or other sums recovered before them by distress and sale of the offender's goods, but no further remedy is thereby provided in case no sufficient distress be found whereon to levy such penalties; be it therefore enacted, that in all such cases, and in all cases of convictions or orders where the statute on which the same are respectively founded provides no remedy in case it shall be returned to a warrant of distress thereon that no sufficient goods of the party against whom such warrant shall have been issued can be found, it shall nevertheless be lawful for the justice to whom such return is made, or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, if he or they shall think fit, by his warrant as aforesaid, to commit the defendant to the house of correction or common gaol as aforesaid for any term not exceeding three calendar months, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and of the commitment and conveying of the defendant to prison (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

By sect. 23 power is given to justices to order commitment in the first instance for nonpayment of a penalty or of a sum ordered to be paid. See "*Commitment*," "*Justices*."

Power to justices to order commitment where the conviction is not for a penalty, nor the order for payment of money, and the punishment is by imprisonment, &c.

Sec. 24. And be it enacted, that where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour for his offence, or where an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned, or imprisoned and kept to hard labour, and the defendant neglects or refuses to do such act, in every such case it shall be lawful for such justice or justices making such conviction or order, or for some other justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of commitment (P. 1, 2) under his or their hand and seal or hands and seals, and requiring the constable or constables to whom the same shall be directed, to take and convey such defendant to the house of correction or common gaol for the same county, riding, division, liberty, city, borough, or place, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct; and in all such cases, where by such conviction or order any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the justice or justices shall think fit, be levied by warrant of distress (P. 3, 4) in manner aforesaid, and in default of distress the defendant may, if such justice or justices shall think fit, be committed (P. 5) to the same house of correction or common gaol in manner aforesaid, there to be imprisoned for any time not exceed-

Costs may be levied by distress, and in default defendant may be committed for a further term.

ing one calendar month, to commence at the termination of the imprisonment he shall then be undergoing, unless such sum for costs, and all costs and charges of the said distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

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(P. 3.)

Warrant of distress for costs upon a conviction where the offence is punishable by imprisonment.

*To the constable of* \_\_\_\_\_ *and to all other peace officers in the said [county]*  
*of* \_\_\_\_\_

Whereas A. B. of [labourer], was on \_\_\_\_\_ last past duly convicted before the undersigned, [one] of her Majesty's justices of the peace in and for the said county, for that [stating the offence as in the conviction], and it was thereby adjudged that the said A. B. for his said offence should be imprisoned in the house of correction at \_\_\_\_\_ in the said county [and there kept to hard labour] for the space of \_\_\_\_\_; and it was also thereby adjudged that the said A. B. should pay to the said C. D. the sum of \_\_\_\_\_ for his costs in that behalf; and it was thereby ordered that if the said sum of \_\_\_\_\_ for costs should not be paid [forthwith] the same should be levied by distress and sale of the goods and chattels of the said A. B.; [and it was adjudged that in default of sufficient distress in that behalf the said A. B. should be imprisoned in the said house of correction [and there kept to hard labour] for the space of \_\_\_\_\_ to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said house of correction, should be sooner paid: (\*) And whereas the said A. B. being so convicted as aforesaid, and being required to pay the said sum of \_\_\_\_\_ for costs, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of \_\_\_\_\_ days next after the making of such distress the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the clerk of the justices of the peace for the division of \_\_\_\_\_ in the said [county], that he may pay the same as by law directed, and may render the surplus (if any), on demand, to the said A. B., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L. S.)

(P. 4.)

Warrant of distress for costs upon an order where the disobeying of the order is punishable with imprisonment.

*To the constable of* \_\_\_\_\_ *and to all other peace officers in the said [county]*  
*of* \_\_\_\_\_

Whereas on \_\_\_\_\_ last past complaint was made before the undersigned, [one] of her Majesty's justices of the peace in and for the said county of \_\_\_\_\_ for that [ &c., as in the order], and afterwards, to wit, on \_\_\_\_\_ at \_\_\_\_\_ the said parties appeared before me, as such justice as aforesaid [or as it may be in the order], and thereupon, having considered the matter of the said complaint, I adjudged the said A. B. to [ &c., as in the order]; and that if upon a copy of the minute of that order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual abode, he should neglect or refuse to obey the same, I adjudged that in such case the said A. B. for such his disobedience should be imprisoned in the house of correction

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at \_\_\_\_\_ in the said county [and there kept to hard labour] for the space of \_\_\_\_\_ [unless the said order should be sooner obeyed]; and I thereby also adjudged the said A. B. to pay to the said C. D. the sum of \_\_\_\_\_ for his costs in that behalf; and I ordered that if the said sum for costs should not be paid [forthwith] the same should be levied of the goods and chattels of the said A. B.; [and in default of sufficient distress in that behalf I thereby adjudged that the said A. B. should be imprisoned in the said house of correction [and there kept to hard labour] for the space of \_\_\_\_\_, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said house of correction, should be sooner paid]: (\*) And whereas after the making of the said order a copy of the minute thereof was duly served upon the said A. B., but the said A. B. did not then pay, nor hath he paid, the said sum of \_\_\_\_\_ for costs or any part thereof, but [therein hath made default: These are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of \_\_\_\_\_ days next after the making of such distress the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to \_\_\_\_\_ the clerk of the justices of the peace for the division of \_\_\_\_\_ in the said [county], that he may pay the same as by law directed, and may render the overplus, if any, on demand, to the said A. B., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L. S.)

(P. 5.)

Warrant of commitment for want of distress in either of the last two cases.

To the constable of \_\_\_\_\_, and to the keeper of the [house of correction] at \_\_\_\_\_, in the said [county] of \_\_\_\_\_.

Whereas [&c., as in the last two forms respectively, to the asterisk (\*), and then thus]: And whereas afterwards, on the \_\_\_\_\_ day of \_\_\_\_\_ in the year aforesaid, I the said J. S. issued a warrant to the constable of \_\_\_\_\_ commanding him to levy the said sum of \_\_\_\_\_ for costs, by distress and sale of the goods and chattels of the said A. B.: And whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are therefore to command you the said constable of \_\_\_\_\_ to take the said A. B., and him safely to convey to the [house of correction] at \_\_\_\_\_ aforesaid, and there deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said house of correction, to receive the said A. B. into your custody in the said house of correction, there to imprison him [and keep him to hard labour] for the space of \_\_\_\_\_ unless the said sum, and all costs and charges of the said distress, [and of the commitment and conveying of the said A. B. to the said house of correction,] amounting to the further sum of \_\_\_\_\_, shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L. S.)

If information be dismissed costs may be recovered by distress upon prosecutor, &c., who in default may be committed.

Sect. 26. Where any information or complaint shall be dismissed with costs as aforesaid, the sum which shall be awarded for costs in the order for dismissal may be levied by distress (Q. 1) on the goods and chattels of the prosecutor or complainant in manner aforesaid; and in default of distress or payment such prosecutor or complainant may be committed (Q. 2) to the house of correction or

common gaol in manner aforesaid, for any time not exceeding one calendar month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of such prosecutor or complainant to prison, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

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(Q. 1.)

Warrant of distress for costs upon an order for dismissal of an information or complaint.

To the constable of \_\_\_\_\_ and to all other peace officers in the said [county]  
of \_\_\_\_\_

Whereas on \_\_\_\_\_ last past information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said county, for that [ &c., as in the order of dismissal ] ; and afterwards, or wit, on \_\_\_\_\_ at \_\_\_\_\_ both parties appearing before me in order that I should hear and determine the same, and the several proofs adduced to me in that behalf being by me duly heard and considered, and it manifestly appearing to me that the said information [or complaint] was not proved, I therefore dismissed the same, and adjudged that the said C. D. should pay to the said A. B. the sum of \_\_\_\_\_ for his costs incurred by him in his defence in that behalf ; and I ordered that if the said sum for costs should not be paid [forthwith] the same should be levied of the goods and chattels of the said C. D. ; and I adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the house of correction at \_\_\_\_\_ in the said county, and there kept to hard labour, for the space of \_\_\_\_\_ unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said C. D. to the said house of correction, should be sooner paid ] : (\*) And whereas the said C. D., being now required to pay unto the said A. B. the said sum for costs, hath not paid the same or any part thereof, but therein hath made default : These are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D. ; and if, within the space of \_\_\_\_\_ days next after the making of such distress, the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to \_\_\_\_\_ the clerk of the justices of the peace for the division of \_\_\_\_\_ in the said [county], that he may pay and apply the same as by law directed, and may render the overplus (if any), on demand, to the said C. D., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L. S.)

(Q. 2.)

Warrant of commitment for want of distress in the last case.

To the constable of \_\_\_\_\_ and to the keeper of the [house of correction] at \_\_\_\_\_, in the said [county] of \_\_\_\_\_

Whereas [ &c., as in the last form to the asterisk (\*) ], and then thus : And whereas afterwards, on the \_\_\_\_\_ day of \_\_\_\_\_ in the year aforesaid, I the said justice issued a warrant to the constable of \_\_\_\_\_ commanding him to levy the said sum of \_\_\_\_\_ for costs by distress and sale of the goods and chattels of the said C. D. ; And whereas it appears to me as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found : These are therefore to command you the said constable of \_\_\_\_\_, to take the said C. D., and him safely convey to the house of correction at \_\_\_\_\_ aforesaid, and there deliver him to the said keeper thereof, together with this

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*precept: and I do hereby command you the said keeper of the said house of correction to receive the said C. D. into your custody in the said house of correction, there to imprison him [and keep him to hard labour] for the space of unless the said sum, and all costs and charges of the said distress, [and of the commitment and conveying of the said C. D. to the said house of correction,] amounting to the further sum of shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant.*

*Given under my hand and seal, this                      day of                      , in the year of our Lord                      , at                      , in the [county] aforesaid.*

J. S. (L. S.)

After appeal against conviction or order justice may issue warrants of distress for execution of the same.

Costs of appeal, how recovered.

Sect. 27. After an appeal against any such conviction or order as aforesaid shall be decided, if the same shall be decided in favour of the respondents, the justice or justices who made such conviction or order, or any other justice of the peace of the same county, riding, division, liberty, city, borough, or place, may issue such warrant of distress or commitment as aforesaid for execution of the same, as if no such appeal had been brought; and if upon any such appeal, the court of quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid; and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs, such clerk of the peace or his deputy, upon application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a certificate (R) that such costs have not been paid; and upon production of such certificate to any justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for him or them to enforce the payment of such costs by warrant of distress (S. 1) in manner aforesaid, and in default of distress he or they may commit (S. 2) the party against whom such warrant shall have issued in manner hereinbefore mentioned for any time not exceeding three calendar months, unless the amount of such costs, and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such justice or justices shall think fit so to order, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

(R.)

Certificate of clerk of the peace that the costs of an appeal are not paid.

*Office of the clerk of the peace for the [county] of                      .  
(Title of the appeal.)*

*I hereby certify that at a court of general quarter sessions of the peace holden at                      in and for the said [county] on                      last past, an appeal by A. B. against a conviction [or order] of J. S., esq., one of her Majesty's justices of the peace for the said [county], came on to be tried, and was then heard and determined, and the said court of general quarter sessions thereupon ordered that the said conviction [or order] should be confirmed [or quashed], and that the said [appellant] should pay to the said [respondent] the sum of                      for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace of the said county on or before the                      day of                      instant, to be by him handed over to the said [respondent]; and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order. Dated the                      day of                      , 18                      .*

G. H.

[Deputy] clerk of the peace.

(S. 1.)

Warrant of distress for costs of an appeal against a conviction or order.

To the constable of                      and to all other peace officers in the said [county]  
of                      .

Whereas [&c., as in the warrants of distress, N. 1, 2, ante, to the end of the statement of the conviction or order, and then thus]: And whereas the said A. B. appealed to the court of general quarter sessions of the peace for the said county against the said conviction [or order], in which appeal the said A. B. was the appellant, and the said C. D., [or J. S., esq., the justice of the peace who made the said conviction or order] was the respondent, and which said appeal came on to be tried, and was heard and determined, at the last general quarter sessions of the peace for the said county holden at                      on                      and the said court of general quarter sessions thereupon ordered that the said conviction [or order] should be confirmed [or quashed], and that the said [appellant] should pay to the said [respondent] the sum of                      for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace of the said [county] on or before the                      day of                      18                      , to be by him handed over to the said [C. D.]: And whereas the [deputy] clerk of the peace of the said [county] hath, on the                      day of                      instant, duly certified that the said sum for costs had not then been paid: (\*) These are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said [A. B.], and if within the space of                      days next after the making of such distress the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to                      the clerk of the justices of the peace for the division of                      in the said [county], that he may pay and apply the same as by law directed, and if no such distress can be found then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this                      day of                      , in the year of our  
Lord                      , at                      , in the [county] aforesaid.

J. N. (L. S.)

(S. 2.)

Warrant of commitment for want of distress in the last case.

To the constable of                      and to the keeper of the [house of correction] at  
in the said [county] of                      .

Whereas [&c., as in the last form to the asterisk (\*), and then thus]: And whereas afterwards, on the                      day of                      in the year aforesaid, I the undersigned issued a warrant to the constable of                      commanding him to levy the said sum of                      for costs by distress and sale of the goods and chattels of the said A. B.: And whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said [A. B.], but that no sufficient distress whereon to levy the sum above mentioned could be found: These are therefore to command you the said constable of                      to take the said A. B., and him safely to convey to the [house of correction] at                      aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of                      unless the said sum, and all costs and charges of the said distress [and of the commitment and conveying of the said A. B. to the said house of correction], amounting to the further sum of                      shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this                      day of                      , in the year of  
our Lord                      , at                      , in the [county] aforesaid.

J. N. (L. S.)



11 & 12 Vict.  
c. 43.

On payment of penalty, &c., distress not to be levied, or the party, if imprisoned for non-payment, shall be discharged.

In cases of summary proceedings one justice may issue summons or warrant, &c., and after conviction or order may issue warrant of distress, &c.

Regulations as to whom penalties, &c., to be paid.

Forms in the schedule deemed valid.

To what this act shall not extend.

Sect. 28. In all cases where any person against whom a warrant of distress shall issue as aforesaid shall pay or tender to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same; and in all cases in which any person shall be imprisoned as aforesaid for nonpayment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter.

Sect. 29. In all cases of summary proceedings before a justice or justices of the peace out of sessions upon any information or complaint as aforesaid it shall be lawful for one justice to receive such information or complaint, and to grant a summons or warrant thereon, and to issue his summons or warrant to compel the attendance of any witnesses, and to do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute in that behalf such information or complaint must be heard and determined by two or more justices; and after the case shall have been so heard and determined one justice may issue all warrants of distress or commitment thereon; and it shall not be necessary that the justice who so acts before or after such hearing shall be the justice or one of the justices by whom the said case shall be heard and determined: Provided always, that in all cases where by statute it is or shall be required that any such information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices must be present and acting together during the whole of the hearing and determination of the case.

Sect. 31. In every warrant of distress to be issued as aforesaid the constable or other person to whom the same shall be directed shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the clerk of the division in which the justice or justices issuing such warrant shall usually act.

By sect. 32 the several forms above to this act, or forms to the like effect, are to be deemed good, valid, and sufficient in law.

Sect. 35. Nothing in this act shall extend or be construed to extend to any warrant or order for the removal of any poor person who is or shall become chargeable to any parish, township, or place; nor to any complaints or orders made with respect to lunatics, or the expenses incurred for the lodging, maintenance, medicine, clothing, or care of any lunatic or insane person; nor to any information or complaint or other proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post office; nor shall anything in this act extend or be construed to extend to any complaints, orders, or warrants in matters of bastardy made against the putative father of any bastard child, save and except such of the provisions aforesaid as relate to the backing of warrants for compelling the appearance of such putative father or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for nonpayment of the same; nor shall anything in this act extend to any proceedings under the acts of parliament regulating or otherwise relating to the labour of children and young persons in mills or factories.

In the statutes consolidating the criminal law relating to offences against the person c. 90, to larceny c. 96, to malicious injuries to property, c. 97, and to the coin c. 99, passed in 24 & 25 Vict.: the proceedings in respect of the offences thereby made punishable by fine

or otherwise on summary conviction, are to be had and prosecuted in manner directed by 11 & 12 Vict. c. 43, so far as no provision is made by these consolidating statutes for any matter or thing which may be required to be done in the course of such prosecution, and all provisions contained in the 11 & 12 Vict. c. 43 shall be applicable to such prosecutions in the same manner as if they were incorporated in the said several consolidating statutes.

Sometimes the authority to issue distress warrant is given by the statute, directing the magistrate to exercise it *immediately* upon non-payment of the penalty; in other cases, only upon failure of payment after a certain number of days. In the latter case no demand is, it seems, necessary to enable the magistrate to issue the warrant after the expiration of the time limited for payment. (*Wootton v. Harvey*, 6 East, 75; *Paley*, 234.)

The demand required by 43 Geo. 3, c. 99, s. 33, previously to a distress being levied for assessed taxes, need not be made in writing, nor personally on the party from whom they are due; it is sufficient if a demand has in fact been made, and there has been a refusal on the ground of inability to pay, or for any other cause. (*Rex v. Ford*, 2 A. & E. 588.) It is not essential that the demand to which the refusal applies, should have specified the precise amount claimed, if the debtor understood what the amount was, and did not object to it. (*Ib.*)

As to when a demand and refusal of a land tax or assessed tax rate is necessary before distress, see *Gibbs v. Stead*, 8 B. & C. 528, "*Land Tax*."

Before a party is distrained on for a sewers rate a demand should be made. (*Style*, 13.)

In a distress for poor rates, a summons is necessary before issuing the warrant. (*R. v. Benn*, 6 T. R. 198.) And see *R. v. Justices of Stafford*, 3 A. & E. 425, "*Poor*." Summons before issuing.

And the same should be issued in most cases where the distress is for a mere rate or assessment.

And accordingly where by statute establishing a gas-light company it was enacted, that if any person should refuse or neglect for ten days after demand to pay any rent due from him to the company for the supply of gas, such rent should be recovered by the company or their clerk by warrant of any justice of the peace for the town, &c.; and it should be lawful for the company or their clerk, or any person acting under their authority, with such warrant, to levy the sum so due by distress and sale of the goods of the party so neglecting or refusing to pay, or the same might be recovered by action, &c. It was held that a warrant so issued by a justice, without previously summoning and hearing the party to be distrained upon, was illegal, though a summons and hearing were not in terms required by the act. (*Painter v. Liverpool Gas Company*, 3 A. & E. 433.)

In the same case it was decided, as a general rule, that where a magistrate grants a warrant in the nature of execution, he is bound first to summon and hear the parties, unless the statute under which he acts clearly renders the discharge of that function ministerial only, or, in some other manner dispenses with the summons and hearing. (*Ib.*)

In trover for distraining plaintiff's goods, the company justified under the above warrant, and stated that it was issued on the complaint of their collector, and that he, by virtue of it and under their authority, seized the plaintiff's goods for the purpose of levying a sum owing by him to them and duly demanded according to the act. It was also held, that the warrant, although it would have protected the clerk or an officer, was no justification to the company, they not having acted in obedience to it, but having put it in force as parties. (*Ib.*)

Oath before issuing.

If an oath or affirmation be required before granting the warrant of distress, the same may be made before any justice acting under the statute which authorises the levy. See "*Oaths*."

Mandamus to issue.

If the magistrate improperly refuse to issue the distress warrant, the Court of Queen's Bench will grant a *mandamus* against him to compel him to issue it, or a rule under 11 & 12 Vict. c. 44, s. 5. See "*Justices*."

Best not to issue in case of doubt.

But if there be *reasonable* ground for the magistrate's doubting his authority to grant the warrant, he had better not do so; and the court would not compel him to act. (*R. v. Bucks JJ.* 1 B. & C. 485; 1 D. & R. Mag. Ca. 366.)

And where a local act of parliament declares that it shall be lawful for justices to issue their warrant to levy a rate imposed by certain commissioners under that act, upon a neglect or refusal to pay the rate; but does not contain any language directly making it compulsory on them to issue it, they may refuse to issue the warrant till the party has been summoned before them, and the court will not compel them by *mandamus* to issue a warrant in the first instance without any summons. Where in such an act the power of entertaining an appeal against a rate is in the commissioners appointed under the act and not in the justices, the latter may still reasonably require the party to be summoned before them previously to their issuing their warrant. The provisions of such an act must be treated in that respect like those of the 43 Eliz. (*R. v. Justices of Stafford*, 3 A. & E. 425; and see *Painter v. Liverpool Gas Company*, ante.)

By a local act commissioners were empowered to make paving rates, and to hear and relieve parties complaining of such rates. The act also gave an appeal from the commissioners to the sessions. And it provided that on non-payment of rates for seven days after personal demand, it should be lawful for certain justices upon proof on oath of such demand and non-payment to issue a distress warrant. Justices being applied to for such warrant refused to grant it; but stated that they would do so if a proper information were sworn, and the party summoned before them. The court refused a *mandamus* to compel the justices to issue a warrant without summoning the party. Supposing that the act authorised the justices to grant a warrant without a summons, it was held nevertheless that they acted rightly in not so granting it. (*R. v. Hughes*, 3 A. & E. 425.)

Warrant during an appeal.

Several statutes give a power of appeal to the party convicted, and at the same time provide that, upon the appeal and security given for the prosecuting it, the distress shall be stayed until the appeal be determined. In such cases, after the determination of the appeal, if the time limited for making the distress be expired, the magistrate may it seems issue his warrant immediately without any fresh demand, for the time runs from the order. (6 East, 75.) But if the warrant has been issued before and suspended by the appeal, it is better after the decision of the appeal to apply to the magistrate and lay the facts before him, before proceeding to the execution of the warrant. (Per *Laurence, J.*, *Wootton v. Harvey*, 6 East, 79; *Paley*, 234.) In cases of orders and convictions, see ante, s. 27, 11 & 12 Vict. c. 43.

Suspension of warrant.

It seems doubtful if justices have in any case a right to revoke or suspend a warrant after they have once issued it, at least when third parties have become interested in having the execution of the warrant. If the warrant were a nullity, it might perhaps be suspended. But where justices are empowered to settle and allow the accounts of a public officer, and, in case of a neglect or refusal by such officer, for fourteen days after the allowance, to pay over the balance found to be due from him, are directed, upon application of the parties interested, to issue a distress warrant for such balance, they cannot after issuing a warrant in conformity with the power given to them, but before

execution of it, order that the execution be suspended, on the ground of an error in the settlement of the accounts, unless the parties interested consent to such suspension. (*Barons v. Luscombe*, 3 A. & E. 589.)

If one warrant only be made for levying a good and a bad rate, the warrant, it seems, is bad for the whole, and the distress cannot in any way be supported. (2 W. Bla. 1330.)

But if a joint distress be made under four several warrants, for four several rates, of which one is bad, the distress is not therefore void. If a party enter and make a joint distress for four several rates, being furnished for that purpose with four warrants, one of which is bad, he may in a replevin for such distress justify under the good warrants and abandon the bad one; and if the causes of taking are distinct, and the avowries separate, he will be entitled to a return of all the goods. Where some of the avowries justified the whole taking under good warrants only, and the plaintiff alleged in answer to each of the avowries, that the whole distress was taken jointly under the four warrants, of which one was bad, and the defendant did not on the record contradict that allegation; it was held, nevertheless, that the defendant was entitled to judgment and a return of all the goods. But in such case an action may possibly be maintained for an excessive distress. (*Governor, &c. of Poor of City of Bristol v. Wait*, 1 A. & E. 264.)

When warrant bad in part, is bad for the whole.

One distress under several warrants, one of which is defective.

In replevin the defendants made avowry under a distress warrant for poor rates. The warrant was to levy a gross sum, made up of several rates, some of which had not been published on the Sunday after allowance, but the plaintiff had not appealed against them; held, however, that as the rates, of which due notice had not been given, were invalid, the distress was illegal. (*Sibbald v. Roderick*, 11 A. & E. 38; and *Charlton v. Alway* 11 A. & E. 993.)

Distress for several rates where some invalid.

The constable or parish officer, or other known officer in a borough or other special jurisdiction, is the proper person to execute the warrant. (*Paley*, 235.) He is bound to execute and return the warrant, if delivered to him in a reasonable time, and is punishable for neglect. (*Fortes* 127; 2 *Lord Raym.* 1189; *R. v. Wyat*, 1 *Salk.* 380.)

Who to execute it.

The constable is not protected by the warrant, though it be valid on the face of it, if the justices have no jurisdiction to issue it; but if the justices have jurisdiction, and merely act *inverso ordine*, or irregularly, the constable will then be protected by the warrant. (*Morrell v. Martin*, 4 *Scott*, N. R. 300.)

In cases of distress for the levying of penalties there seems to be no power to break open doors or gates, in case they are locked up or shut, unless such penalty or part thereof be given to the king; which matter may seem to require some consideration. (See 2 *Hawk. c.* 14, s. 5; 2 *Jones*, 233; *Theobald v. Critchmore*, 1 B. & Al. 227; *Launock v. Brown*, 2 B. & Al. 592; *Parton v. Williams*, 3 B. & Al. 330.) And as to breaking open doors in general, see *ante* "Warrant," "House."

It should seem that in general the law as to what may be taken in execution under a writ of *fiery facias* would be here applicable. (And as to which see *Tidd's Prac.* 9th ed. 1001, &c.; 1 *Arch. Pr.* by *Chit.* 425.)

It has been decided that *averia caruæ* or implements of trade may be distrained for a poor's rate, although there be other sufficient distress; for the distress in this case is in nature of an execution. (*Hutchins v. Chambers*, 1 *Burr.* 579; *Com. Dig. Distress*, C.)

What may be seized.

If the party convicted be a feme covert, the goods of the husband are not in general liable to be distrained on, unless there be an express authority for it in the act of parliament allowing the distress, as there is in the 22 Car. 2. c. 1. (See 11 Co. 61 b; *Paley*, 237.)

Against feme covert.

The constable distraining has no power to impound the goods on the premises, and cannot remain longer than a reasonable time to

Impounding distress on premises.

## Warrant of Distress by Justices.

enable him to remove the goods. (*Peppercorn v. Hoffman*, 9 M. & W. 618.)

It has been resolved that the words in an act of parliament, "to be levied by distress," must be understood of "distress and sale." (*R. v. Speed*, 1 Salk. 379, *Carth.* 502; 1 *Ld. Raym.* 583, S. C.; *Morley v. Stacker*, 6 Mod. 83; *Com. Dig. Distress*, D. 7.)

Should be for ready money.

The sale ought to be by the officer for ready money, and if he sells on credit, he will be liable for the produce. (*Semble, Morley v. Stacker*, 6 Mod. 83.)

Under a void warrant.

It is doubtful whether a sale under a defective or void warrant passes any property in the goods even to a *bonâ fide* purchaser. (*Lock v. Selwood*, 1 G. & Dav. 366.)

Quakers excepted.

By 27 Geo. 2, c. 20, s. 3, the levying for costs shall not extend to alter any provisions relating to distresses to be made for the payment of tithes and church-rates by the people called Quakers, contained in stats. 7 & 8 Will. 3, c. 34, and 1 Geo. 1, stat. 2, c. 6. (See the 53 Geo. 3, c. 127, s. 6, "*Church or Chapel*," and "*Tithes*.")

By special statutes, the power of ascertaining the charges of distress and sale is sometimes given to the justices, as is set forth under the respective titles throughout this work.

Quakers' tithes and church and other rates, taxes, &c.

The above mentioned statutes of the 7 & 8 Will. 3, c. 34, and 1 Geo. 1, st. 2, c. 6, relate not only to *tithes and church rates*, (by which last seemeth only to be understood the churchwardens' rate for the repair and other uses of the church), but also to any customary or other rates, dues, or payments belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister or curate officiating in any church or chapel. Therefore, for anything that appears from the words of this statute, unless it be in the case of *tithes or church rates*, the justices may order the distress for those other dues and payments to be detained for a certain time, and the officer may deduct the charges not only of *distraint*, but also of *keeping and selling* the distress; whereas by those former acts above mentioned, the officer was only allowed to deduct the necessary charges of *distraint*.

By 7 & 8 Geo. 4, c. 17, (tit. "*Church*,"), the provisions of the 57 Geo. 3, c. 93, regulating the costs of distresses for rent not exceeding 20*l.*, are extended to distresses not exceeding 20*l.* for land tax, assessed taxes, poor's rates, church rates, tithes, highway rates, sewers rates, or any other rates, taxes, impositions, or assessments whatever.

Replevin, when it lies.

*Replevin.*]—It may be as well to observe, that where goods are taken by way of a levy, as for a penalty on a conviction under a statute, it is generally in the nature of an execution; and unless replevin be given by the statute, it will not lie, the conviction being conclusive and its legality not questionable in replevin. (*Fenton v. Boyle*, 2 New Rep. 399; 6 *Bac. Abr.* 5th ed. 58, *Replevin*, (O.); *Com. Dig. Action*, (M.); *Willes*, 673, n. b.; *Wilson v. Weller*, 1 B. & B. 57; *Fawcett v. Fowles*, 7 B. & C. 398.)

In some cases where a special inferior jurisdiction is given to justices, and they exceed it, replevin lies. (*Willes*, 673 n. b.) It lies for goods distrained under a warrant from commissioners authorised by act of parliament to levy rates for specific local purposes, with power of distress. (1 *Swanst.* 301; and see *Wilson v. Weller*, 1 B. & B. 57.) It lies to try the legality of a distress for poor rates, where there is a total want of jurisdiction; as if the party distrained on was not an occupier; (see *Governors of Bristol Poor v. Wait*, 1 A. & E. 264; *Sibbald v. Roderick*, 11 A. & E. 38; *Fawcett v. Fowles*, 7 B. & C. 398; *Dewell v. Marshall*, 3 Wils. 442; *Herbert v. Waters*, 1 Salk. 205, and 1 *Ld. Raym.* 59; *Fletcher v. Wilkins*, 6 East, 283); or for a sewers rate. (*Pritchard v. Stephens*, 6 T. R. 522; *Hard.* 478.)

# Warrant of Distress for Rent,

## AND WHAT MAY BE TAKEN BY DISTRESS FOR RENT.

[4 Geo. 2, c. 28; 56 Geo. 3, c. 50; 3 & 4 Will. 4, c. 27; 6 & 7 Vict. c. 40.]

A DISTRESS is the taking of a personal chattel out of the possession of the wrong-doer into the custody of the party injured, to procure satisfaction for the wrong committed, and is of two kinds, either for cattle trespassing and doing damage, or for non-payment of rent or other duties. What is.

As to this remedy in case of beasts *damage feasant*, that is, doing damage or trespassing upon the land, all chattels whatever are distrainable *damage feasant*, it being but natural justice that whatever doth the injury should be a pledge to make compensation for it. (*Gilb. Dist.* 24, 38; 3 *Bla. Com.* 6.) If a man take cattle and put them into the land of another man, the tenant of the land may take these cattle *damage feasant*, though the owner was not privy to the cattle being *damage feasant*, and he may keep them against the true owner, till satisfaction of the damages. (1 *Roll. Abr.* 655; *Roll. Rep.* 449.) If a man come to distrain, and see the beasts in his ground, and the owner chase them out on purpose before the distress taken, yet the owner of the soil cannot distrain them. (*Co. Lit.* 161; 2 *Bac. Abr.* 354.) For distress *damage feasant* is the strictest distress that is, and the thing distrained must be taken in the very act; for if the goods are once off, though on fresh pursuit, the owner of the ground cannot take them. (*Vaspor v. Edwards*, 12 *Mod.* 661.) If ten head of cattle were doing damage, a man cannot take one of them and keep it till he be satisfied for the whole damage, but for its own damage only; but he may bring an action of trespass for the rest. (*Vaspor v. Edwards*, 12 *Mod.* 660.)

This remedy for recovering rent by way of distress seems first to have come over to us from the civil law: for anciently, in the feudal law, not paying attendance at the Lord's courts, or not doing the feudal service, was a forfeiture of the estate. But these feudal forfeitures were afterwards turned into distresses, according to the pignorary method of the civil law; that is, the land that is let out to the tenant is hypothecated, as a *pledge* in his hands, to answer the rent agreed to be paid to the landlord, and the whole profits arising from the land are liable to the lord's seizure for the payment and satisfaction thereof. (*Gilb.* 2.) The distress, being a pledge, could not be sold till the 2 Will. & Mary, c. 5, *post*, p. 1160. Origin of distress for rent.

It may now be laid down as an universal principle, that a distress may be taken for any kind of *rent* in arrear, the detention whereof beyond the day of payment is an injury to him that is entitled to receive it. (*Woodf.* 356; 3 *Bla. Com.* 6.) Formerly only a pledge without power of sale.

By the common law a distress could not lie for rent-seck. However, by stat. 4 Geo. 2, c. 28, s. 5, the like remedy may be had by distress, impounding, and sale, in cases of rent-seck, rents of assize, and chief rents, as in case of rents reserved upon lease. Nature of rents.

No distress can be taken for a rent reserved on a letting of mere *personal* property; (5 *Co.* 17; *Bally v. Wells*, 3 *Wils.* 27;) and where land itself is not demised, but the mere *use* of it, a distress for rent thereon cannot be made under such a demise; (*Buzzard v. Capel*, 8 *B. & Cress.* 141; 2 *M. & R.* 197;) for a *rent* cannot issue out of a privilege or easement. (*Ib.*) A distress may be made for rent of a ready-furnished house or lodging, because it is then considered that the rent issues out of the principal, the real property demised. (*Newman v. Anderton*, 2 *New Rep.* 224; and see *Farewell v. Dickenson*, 6 *B. & C.* 251; *Philpott v. Dobbinson*, 6 *Bing.* 105; 3 *M. & P.* 320.) Out of personality.

Out of incorporeal hereditaments.

Rent cannot properly be reserved out of incorporeal hereditaments, as commons, tithes, or tolls. (*Co. Lit.* 47 a; and see *Bird v. Higgen-son*, 2 A. & E. 696; *S. C. in error*, 6 A. & E. 824.)

Out of lands and incorporeal hereditaments.

Where a valid demise is made of lands and incorporeal hereditaments together at an entire rent, the rent issues solely out of the land in point of remedy, but out of both in point of render. And in such a case, it would seem, a distress might be made upon the land for the entire rent. (19 *Vin. Ab.* 122, *Reservation*, (O); *Doubitofte v. Curteene*, *Cro. Jac.* 452.) But where lands and tithes were demised by parol at an entire rent, it was held, that the demise being void as to the tithes, the lessor could not distrain for the whole rent, or any part of it, on the land only. (*Gardiner v. Williamson*, 2 B. & Ad. 336; *Bird v. Higgen-son*, 6 A. & E. 824.)

Bailiffs.

The lessor or landlord himself may make the distress; in general, however, he employs some third person, called a "bailiff." The authority given on this employment may be by parol, but in general it is in writing (usually called a "warrant of distress"), and it is best it should be so.

Their authority.

The authority should be given by all the parties entitled to distrain. (1 *Leon.* 50.)

A man, indeed, may distrain for another person without any express authority; if he afterwards obtain the assent of such person, such assent will have relation to the time of the distress taken. (*Gill. Distress*, 32.)

Time of distress.

For a rent or service the lord cannot distrain in the night, but in the day-time; and so it is of a rent-charge; but for *damage feasant*, one may distrain in the night; otherwise it may be the beasts may be gone before he can take them. (1 *Inst.* 142, (a).)

Before sunrise, or after sunset, no man can distrain but for *damage feasant*. (*Mirroure*, c. 2, s. 26; see also *Milborn's Case*, 7 *Rep.* 7 (a); *Aldenburgh v. Peaple*, 6 C. & P. 212.)

In general the distress cannot be on the day the rent falls due: and it cannot be made in general after the expiration of the tenancy.

Statute of Limitations as to.

By the stat. 3 & 4 Will. 4, c. 27, s. 42, the rent must be distrained for within six years after it becomes due, or after an acknowledgment in writing, signed by the party who owes it or his agent. (See *Grant v. Ellis*, 9 M. & W. 113; *Strachan v. Thomas*, 12 A. & E. 536; *Paget v. Foley*, 3 Scott, 120, and 2 Bingh. N. C. 679.)

56 Geo. 3, c. 50. Sheriff, &c., not to sell or carry off straw, &c., contrary to covenants.

For the protection of landlords, the stat. 56 Geo. 3, c. 50, s. 1, enacts, that no sheriff or other officer in England or Wales, shall, by virtue of any process of any court of law, carry off, or sell or dispose of for the purpose of being carried off from any lands let to farm, any straw thrashed or unthrashed, or any straw of crops growing, or any chaff, colder, or any turnips, or any manure, compost, ashes, or sea-weed, in any case whatsoever, nor any hay, grass, or vetches, nor any roots or vegetables, being the produce of such lands, in any case where, according to any covenant or written agreement entered into and made for the benefit of the owner or landlord of any farm, such hay, grass, or grasses, tares and vetches, roots or vegetables, ought not to be taken off or withholden from such lands, or which by the tenor or effect of such covenants or agreements ought to be used or expended thereon; and of which covenants or agreements such sheriff or other officer shall have received a written notice before he shall have proceeded to sale.

Notice.

Sect. 2 enacts, that the tenant shall give notice to the sheriff of the existence of covenants, and the sheriff to the landlord.

Agreements.

Sect. 3 empowers such sheriff or other officer to dispose of the produce, subject to an agreement to expend it on the land.

See further on this subject, Woodfall on the law of "*Landlord and Tenant*," Gilbert on "*Distresses*," and Com. Dig. "*Distress*," &c.

What chattels may be distrained.

With reference to what may be distrained it may shortly be laid

down as a general rule that all chattels personal which the landlord finds on the premises, whether they in fact belong to the tenant, a lodger, or other stranger, are liable to be distrained unless particularly protected or exempted. (See 3 *Bla. Com.* 7.) And it may be useful to give generally the heads under which the chattels exempted or protected range themselves. These are, (1), whatever is in a man's present use or occupation is during such time privileged, as a horse on which he is riding, or an axe with which he is cutting wood. (*Co. Lit.* 47 *a.*) (2). Things annexed to the freehold or fixtures. (3). Things delivered to a person exercising a public trade, to be carried, wrought, worked up, or managed in the way of his business. (4). Cocks or sheaves of corn, meat, and other things which cannot be restored in the same plight. These classes are absolutely privileged; but also there are two species of property privileged, provided there be other sufficient distress upon the premises, (See 1 *Inst.* 47 *a.*), viz. (1). Beasts of the plough and instruments of husbandry; (2). The instruments of a man's trade or profession, as the axe of a carpenter or the books of a scholar. (*Co. Lit.* 47 *a.*) These general rules have, however, been subjected to various limitations and illustrations by numerous decided cases which will be found referred to in the treatises above mentioned, and are collected in the notes to *Simpson v. Hartopole*. (1 *S. L. C.*)

By the 6 & 7 Vict. c. 40, s. 18, no frame, loom, or machine, materials, tools, or apparatus which shall be intrusted for the purpose of being used or worked in any of the said manufactures, (*i.e.*, the woollen, worsted, linen, cotton, flax, mohair, and silk manufactures,) or any work connected therewith or incidental thereto, or any parts, branches, or processes thereof, whether such frame, loom, or machine, materials, tools, or apparatus, shall or shall not be rented or taken by the hire, shall at any time or times hereafter be distrained or seized, or be liable to be distrained or seized, for rent or for debt, or under any execution or other proceedings whatever, unless the rent be due or the money be owing by the owner of the said frame, loom, or machine, or of the said materials, or tools, or apparatus aforesaid, or of any part thereof respectively.

By sect. 19, if any landlord or other person by virtue of any distress, warrant, execution, or other proceedings for rent in arrear or money due or alleged to be due by any person whomsoever, shall distrain, seize, carry off, sell, or otherwise dispose of any frame, loom, or machine, materials, tools, or apparatus belonging to any person, which shall have been intrusted for the purpose of being used or worked in any of the said manufactures, or any work connected therewith or incidental thereto, or any parts, branches, or processes thereof, and whether the same shall or shall not be rented or taken by the hire, or shall distrain, seize, carry off, sell, or otherwise dispose of any materials as aforesaid, or any tools or apparatus as aforesaid, belonging to any other person, and shall refuse to restore possession of all such frames, looms, machines, tools, or apparatus to the person owning, letting, or intrusting the same when demanded by him or some person duly authorised by him as the said landlord or other person, or the person acting as agent or bailiff of such landlord or other person, it shall and may be lawful to and for any justice of the peace, upon complaint on oath before him, to summon the said landlord or other person to appear before any two or more justices of the peace to answer the said complaint, and on proof of the said offence, the said justices may thereupon order the property so seized, distrained, carried off, or sold, to be forthwith restored, and issue their warrant to a constable or constables, empowering him or them to seize the said property wherever the same shall be found, and deliver possession thereof to the person owning, letting, or intrusting the same, and to levy by distress and sale of the goods of the said landlord or other person, the costs of obtaining the said order, and recovering and

6 & 7 Vict. c. 40.  
Distraining work-  
men's frames.  
Frames, &c., not  
belonging to work-  
men not to be  
seized for rent or  
debt.

If frames so  
intrusted for use  
be distrained,  
justices to order  
restitution to  
owner.

Warrant to con-  
stable to seize  
frames, &c., and  
deliver same to  
owner.



obtaining possession of the said property, and in case the said property cannot be found and seized within a time not exceeding twenty-one days, to be limited in the said warrant, or in case the said property shall have been damaged by the same having been distrained, seized, carried off, or sold, then it shall be lawful for such two justices or any other two justices, on proof thereof, (the said landlord or other person having been first summoned by a justice,) to issue their warrant to levy by distress and sale of the goods and chattels of such landlord or other person, the full value of the said property, or the amount of such damage, as the case may be, together with all costs of recovering and levying the same.

This subject will be here treated of in the matters that come within the cognizance of justices acting under the commission of the peace and of sheriffs.

I. *As to Goods fraudulently conveyed off Premises*, p. 1156.

[11 Geo. 2, c. 19.]

II. *Distress how to be Sold and Costs*, p. 1160.

[2 W. & M. sess. 1, c. 5, s. 1; 57 Geo. 3, c. 93; 7 & 8 Geo. 4, c. 17; 10 & 11 Vict. c. 89; 12 & 13 Vict. c. 92; 17 & 18 Vict. c. 60.]

III. *Replevying Distress*, p. 1165.

[1 & 2 P. & M. c. 12; 11 Geo. 2, c. 19.]

IV. *Rent in case of Extent and Execution*, p. 1168.

[8 Anne, c. 14.]

V. *Rescous and Pound Breach*, p. 1170.

[6 & 7 Vict. c. 30.]

VI. *Forms*, 1172.

### I. Goods fraudulently conveyed off the Premises.

If the lessor did not find sufficient or any goods on the premises demised, he could formerly resort to nowhere else to distrain, and therefore tenants who were knavish made a practice to convey away their goods and stock fraudulently from the premises demised, in order to cheat their landlords.

11 Geo. 2, c. 19.

But now, by stat. 11 Geo. 2, c. 19, s. 1, goods fraudulently removed from the premises may be distrained on within thirty days after removal.

But by sect. 2, no landlord shall seize any such goods as a distress, which shall be sold *bonâ fide*, and for a valuable consideration before seizure.

Outer doors may be broken open. Calling in the aid of constables and justices.

By sect. 7, where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her or their servant or servants, agent or agents, or other person or persons aiding or assisting therein, shall be put, placed or kept in any house, barn, stable, outhouse, yard, close or place locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent; it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her or their steward, bailiff, receiver, or other person or persons empowered to take and seize, as a distress for rent, such goods and chattels, (first calling to his, her or their assistance the constable, headborough, borsholder, or other peace officer of the hundred, borough, parish, district, or place where the same shall be suspected to be concealed, who are hereby required to aid and assist

therein; and in case of a dwelling-house, oath being also first made (a) before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein), in the daytime to break open (b) and enter into such house, barn, stable, outhouse, yard, close and place, and to take and seize such goods and chattels for the said arrears of rent, as he, she, or they might have done by virtue of this or any former act, if such goods and chattels had been put in any open field or place.

Sect. 4. Where the goods and chattels so fraudulently carried off or concealed shall not exceed the value of 50*l.* it shall and may be lawful for the landlord or landlords, from whose estate such goods or chattels were removed, his, her or their bailiff, servant or agent, in his, her or their behalf to exhibit a complaint in writing (c) against such offender or offenders, before two or more justices of the peace of the same county, riding or division of such county, residing near the place whence such goods and chattels were removed, or near the places where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon (d) the parties concerned, examine the fact, and all proper witnesses, upon oath; or if any such witness be one of the people called Quakers, upon affirmation required by law; and in a summary way determine, whether such person or persons be guilty of the offence with which he or they are charged; and to inquire in like manner of the value of the goods and chattels by him, her or them respectively so fraudulently carried off or concealed as aforesaid; and, upon full proof of the offence, by order (e) under their hands and seals, the said justices of peace may and shall adjudge the offender or offenders to pay double the value of the goods and chattels to such landlord or landlords, his, her or their bailiff, servant or agent, at such time as the said justices shall appoint; and in case the offender or offenders having notice of such order, shall refuse or neglect so to do, may and shall by warrant (f) under their hands and seals, levy the same by distress and sale of the goods and chattels of the offender or offenders; and for want of such distress (g) may commit the offender or offenders to the house of correction (h), there to be kept to hard labour without bail or mainprize for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied.

Sect. 5. It shall and may be lawful for any person who thinks himself aggrieved by such order of the said two justices to appeal to the justices of peace at their next general or quarter sessions to be held for the same county, riding or division of such county, who may and shall hear and determine such appeal, and give such costs to either party as they shall think reasonable, whose determination therein shall be final.

Sect. 6. Where the party appealing shall enter into a recognizance (k) with one or two sufficient surety or sureties in double the sum so ordered to be paid, with condition to appear at such general or quarter sessions, the order of the said two justices shall not be executed against him in the mean time.

1. *Goods fraudulently conveyed off the Premises.*

11 Geo. 2, c. 19.

Where goods not exceeding 50*l.* in value are concealed, &c., complaint may be made to two justices.

Offender to pay double value.

Distress (g).  
Commitment (h).

Appeal (i).

Recognizance.

*Observations and Decisions on the above enactments of the 11 Geo. 2, c. 19.*—The first and second sections of this act are remedial, and not penal, and should be construed liberally. (See *Stanley v. Wharton*, 9 Price, 301; *Brooke v. Noakes*, 8 B. & C. 537.)

Act remedial, not penal.

(a) See form (No. 1), *post*.

(b) See form (No. 2), *post*.

(c) See form (No. 3), *post*.

(d) See form (No. 4), *post*.

(e) See forms (No. 5), *post*.

(f) See form (No. 6), *post*.

(g) See form (No. 7), *post*.

(h) See form (No. 8), *post*; see in general, "*Commitment in Execution*."

(i) See in general, "*Appeal*."

(k) See form (No. 9), *post*.

1. Goods fraudulently conveyed off the Premises.

Justices of the peace have jurisdiction under sect. 4 to inquire into and adjudicate on an information for the alleged fraudulent removal of goods by a tenant, although it appears that the property in the premises is disputed, and that the tenant has paid the rent to one of the claimants. (*Coster v. Wilson*, 3 M. & W. 411.)

Applies to goods of tenant only.

The act applies to the goods of the tenant only, which are fraudulently removed, and not those of a stranger (*Thornton v. Adams*, 5 M. & Sel. 38); and it does not apply to an under-tenant removing to avoid the distress of a landlord on his immediate tenant. (*Ib.*; *Bennet's case*, 2 Stra. 787; *Postman v. Hurrell*, 6 C. & P. 225.)

Rent must be due before removal.

To bring the case within the statute, the removal must have taken place after the rent became due. (*Northfield v. Nightingale*, 1 C. & M. 230, n.; *Rand v. Vaughan*, 1 Bingh. N. C. 767; *Watson v. Main*, 3 Esp. 15; 2 Saund. 284, n. 2; removing the doubt expressed by Lord Ellenborough, in *Furneaux v. Fotherby*, 4 Campb. 136.) And goods removed before the rent became due, cannot be followed and distrained, though they were removed fraudulently. (*Watts v. Thomas*, 1 Jur. 919); but the rent need only be due and need not be in arrear when the removal is made to be fraudulent, thus where rent became due on December 25th, and on that day the tenant fraudulently removed his goods with intent to avoid a distress for that rent, though in law no distress could be made till the following day. The rent was due at the beginning of December 25th, and the removal was held to be within sect. 1 of the statute (*Dibble v. Bowater*, 2 E. & B. 564; 22 L. J. Q. B. 396.)

Removal after end of tenancy.

A landlord has no right to follow the goods of a tenant, who has removed them after the tenancy had expired, by the landlord having conveyed away the reversion. (*Ashmore v. Hardy*, 7 Car. & P. 501.)

If sufficient distress left on premises, case not within act.

If there be a sufficient distress left on the premises at the time of the removal, the case is not within the act, and the goods cannot be followed, and it lies on the landlord to prove that there was not such sufficient distress. (*Parry v. Duncan*, 7 Bingh. 243.)

What a fraudulent removal.

The first and second sections apply to all cases where a landlord is, by the conduct of his tenant in removing goods from premises for which the rent is due, turned over to the barren right of bringing an action for his rent. Where, therefore, a tenant openly, and in the face of day, and with notice to his landlord, removed his goods without leaving sufficient on the premises to satisfy the rent then due, and the landlord followed and distrained the goods, it was held, that although the removal might not be clandestine, yet as it was fraudulent, (which was a question for a jury,) the landlord was justified under the act in seizing the goods. (*Opperman v. Smith*, 4 D. & R. 33.)

The removal need not be clandestine as well as fraudulent (*Ib.*); and it is immaterial whether the removal took place by night or with any concealment. (*Ib.*; *Lyster v. Pouron*, 1 C. & P. 121.)

The mere removal of goods by the tenant from the premises when rent is in arrear is not of itself fraudulent as against the landlord; and to justify him in pursuing them he must show that they were removed with a view to elude a distress, as by showing that the tenant left none on the premises or the like. (*Parry v. Duncan*, 7 Bingh. 243; 5 M. & P. 19.)

It is not necessary to show, in proof of concealment of cattle, that they were withdrawn from sight; if they have been removed to a neighbour's field so as to cause the landlord difficulty in finding them, it is sufficient. (*Stanley v. Wharton*, 9 Price, 301.)

Proceedings before justices.

Justices either of the county from which the tenants fraudulently remove goods, or of that in which they are concealed, may convict the offenders within their respective counties. (*R. v. Morgan*, Cald. 156.)

The value of the goods being under 50*l.* does not render it compulsory on the party to have recourse to the summary remedy before

two justices under the fourth section. (*Stanley v. Wharton*, 9 Price, 301; *Horsefall v. Davy*, *Holt*, C. N. P. 147; 1 Stark. 169; *Bromley v. Holden*, 1 M. & M. 175.)

The fact of the landlord's having in the first instance made his complaint under the act before a magistrate, will not prevent him from afterwards bringing an action. (*Horsefall v. Davy*, 1 Stark. 169; *Holt*, C. N. P. 147, S. C.)

As to orders in general, see "Orders." An order of magistrate under the act need not enumerate or specify the particular goods alleged to have been removed. (*R. v. Rabbits*, 6 D. & R. 341.)

The order must show on the face of it that the party removing the goods was tenant; and that is not sufficiently shown by stating that on complaint duly made the party was charged with having fraudulently removed his goods from certain premises to prevent A. B. from distraining them for arrears of rent due to him for the said premises, and that it appearing that he did so remove, &c., he is convicted thereof. (*R. v. Davis*, 5 B. & Ad. 551.) *Semble* also, that the order should state that the complainant was the party's landlord, or the bailiff, servant, or agent of such landlord. (*Ib.*; see "Orders.") A commitment under 11 Geo. 2, c. 19, s. 4, was held bad for not alleging that a complaint in writing had been exhibited by the landlord, his bailiff or agent, notwithstanding it stated that the defendant had been duly charged in writing (*Ex parte Fuller*, 13 L. J. M. C. 142.)

Where a party is convicted of aiding and assisting the tenant in fraudulently conveying away the goods, the order must expressly allege the offence to have been committed, "wilfully and knowingly." (*Reg. v. Radnorshire (JJ.)* 9 Dowl. 90; *Ex parte Morgan*, 4 Jur. 916.)

In the last case, *Williams*, J., doubted whether, since the case of *Rex v. Hulcott* (6 T. R. 583), any intelligible distinction can be said to exist between an order and a conviction; it is therefore advisable that the order under this act should be drawn up with all the strictness of a conviction. See now forms of orders and convictions given under 11 & 12 Vict. c. 43, *Titles*, "Justices," "Orders," "Convictions."

The adjudication of the justices under the statute is an order and not a conviction, and cannot, therefore, like a conviction, be returned to the sessions in an amended form. (*R. v. Justices of Cheshire*, 5 B. & Ad. 439.)

The charge, though set out in the order in the *alternative*, will be good, there being a difference between an indictment or conviction and an order in this respect. (*R. v. Middlehurst*, 1 Burr. 399 (a).)

A warrant of commitment under it, not stating that there had been a complaint in writing to the justices, or that the examination of witnesses was upon oath, but referring to the order of the justices (for payment of double the value of the goods removed) in which those matters were stated, was held sufficient; and that the justices were not liable in trespass. (*Coster v. Wilson*, 3 M. & W. 411.)

It is absolutely requisite, in order to justify breaking open outer gates or doors, or where other force is resorted to, under the 7th section of the act, to call in the aid of a constable as therein prescribed. (*Rich v. Woolley*, 7 Bingh. 651; 5 M. & P. 663.) But it is not necessary that a party seizing goods fraudulently removed should first call to his assistance an ordinary peace officer; it is sufficient if he be assisted by a person appointed a special constable for the occasion. (*Cartwright v. Smith*, 1 M. & Rob. 284.)

1. Goods fraudulently conveyed off the Premises.

Form of order.

Order not amendable.

Warrant of commitment.

Constable must aid in breaking open doors.

2. *Distress,  
how to be Sold,  
and Costs.*

Appraisement, and  
how conducted.

## II. Distress, how to be Sold, and Costs.

It is necessary before selling that "the person distraining" shall, with the sheriff or undersheriff of the county, or with the constable of the hundred, parish, or place where such distress shall be taken, (who are required to be aiding or assisting therein,) cause the goods distrained to be appraised by two sworn appraisers, (whom such sheriff, undersheriff, or constable, is empowered to swear,) who are to appraise the same truly according to the best of their understandings. (2 W. & M. sess. 1, c. 5, s. 1, *infra*.)

The person distraining must not be one of the appraisers, (*B. N. P.* 81; *Westwood v. Cowne*, 1 *Stark.* 172; *Lyon v. Weldon*, 2 *Bingh.* 337; 9 *Moore*, 629, *S. C.*.) unless indeed the tenant consent thereto (*Bishop v. Bryant*, 6 *C. & P.* 484); and he may, it seems, in any case waive the necessity for an appraisement.

The appraisers must not be sworn before the constable of another parish. (*Avenell v. Croker*, 1 *M. & M. C. N. P.* 172; *Wallace v. King*, 1 *H. Bla.* 13). But where the premises partly lay in the hundred of Andover, and partly in the hundred of Kinalsey, the constable of Kinalsey was held the proper officer to administer the oath for the appraisement of the whole distress. (*Walter v. Rumbal*, 1 *Ld. Raym.* 53.)

They must be sworn before the appraisement. (*Kenny v. May*, 2 *M. & Malk.* 56.)

The constable must be present at the appraisement. (*Id.*)

The appraisement must be stamped. (See 1 *Moore*, 241; *Har. L. & T.* 369; 55 *Geo.* 3, c. 184.)

Growing crops and the other things distrainable under 11 *Geo.* 2, c. 19, s. 8, cannot be appraised until *after* they are ripe, cut, gathered, cured, and made. (*Peacock v. Purvis*, 2 *B. & B.* 362; 5 *Moore*, 78.)

Distress in nature  
of a pledge.

Goods distrained were formerly only in the nature of a pledge or security to compel the performance of satisfaction; and upon this account it hath been held, that the distrainer is not at liberty to work or use a distrained beast. This law still continues with regard to beasts taken *damage feasant*, and distresses for suit or services, which must remain impounded till the owner make satisfaction, or contests the right of distraining by replevying the chattels. (3 *Bla. Com.* 13.)

Sale of distress for  
offence presented  
in leet.

Distress taken for an offence presented in the leet may of common right be sold, because it is a court of record; but otherwise it is of distresses in courts that are not of record. (*Rex v. Speed*, 12 *Mod.* 330.)

For amercement  
in court-baron.

A distress for an amercement in a court-baron cannot be sold; but in such a case a distress infinite shall go. (1 *Bulst.* 52, 53.)

2 W. & M. sess. 1,  
c. 5.

Sale of goods dis-  
trained for rent.

And before stat. 2 W. & M. sess. 1, c. 5, distress for rent in arrear could not be sold, but only detained till payment of the rent. By that statute, sect. 1, reciting that "the most ordinary and ready way for recovery of arrears of rent is by distress, yet such distresses not being to be sold, but only detained as pledges for enforcing the payment of such rent, the persons distraining have little benefit thereby;" it is enacted that "where any goods or chattels shall be distrained (a) for any rent reserved and due upon any demise, lease, or contract whatsoever, and the tenant or owner of the goods so distrained shall not within five days next after such distress taken, and notice thereof (with cause of such taking) left at the chief mansion-house, or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient security to be given to the sheriff according to law, that then in such case, after such distress and notice

(a) See "Forms," *post*, No. 10 to 15.

as aforesaid, and expiration of the said five days, the person distraining shall and may, with the sheriff or undersheriff of the county, or with the constable of the hundred, parish, or place where such distress shall be taken (who are hereby required to be aiding and assisting therein), cause the goods and chattels so distrained to be appraised by two sworn appraisers (whom such sheriff, under-sheriff, or constable are hereby empowered to swear), to appraise the same truly, according to the best of their understandings; and after such appraisement shall and may lawfully sell the goods and chattels so distrained for the best price that can be gotten for the same, towards the satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement, and sale, leaving the overplus (if any) in the hands of the said sheriff, undersheriff, or constable, for the owner's use."

2. *Distress, how to be Sold, and Costs.*

The true construction of this statute, in requiring an appraisement, is, that the value of the goods might be ascertained by a fair estimate made at the time of the distress; and that, if on such valuation there should not be thought sufficient without them, the landlord might distrain beasts of the plough. Where, therefore, there had been such an appraisement on oath, and no evidence was offered to show that there was a sufficient distress without taking the beasts of the plough, the Court of Exchequer held, that it was not necessary that the other goods should all have been first disposed of before the latter were sold; unless they were wrongfully taken in the first instance, such sale was not a sufficient ground to support an action on stat. 51, Hen. 3, stat. 4. (*Jenner v. Yolland*, 6 Price, 3; 2 Chit. Rep. 167.)

This provision applies to all cases, and though the rent distrained for does not exceed 20*l.* (*Allen v. Flicker*, 10 A. & E. 640).

After complying with the requisites pointed out by this statute, the landlord may proceed to a sale. But if the distress taken was a subject distrainable at common law he is not obliged to proceed to such a sale, but he may as at common law retain such distress for an unlimited period as a pledge. (*Hudd v. Raveron*, 2 B. & B. 662; 5 Moore, 542, S. C.; *Lear v. Edmonds*, 1 B. & A. 159.)

Sale of things distrainable at common law not compulsory.

By the 11 Geo 2, c. 19, s. 10, the sale may take place on the premises, or it may elsewhere.

Place of sale.

The sale must not take place within the five days, otherwise an action might be maintained, on the equity of the 2 W. & M., against the parties selling. (*Wallace v. King*, 1 H. Blac. 13; *Pitt v. Shew*, 4 B. & Ald. 208.) The five days are to be reckoned exclusive of the first; (*Pitt v. Shew*, 4 B. & Ald. 208; *Wallace v. King*, 1 H. Blac. 13; *Harper v. Taswell*, 6 C. & P. 166;) therefore the sale must not take place until the sixth day, inclusive of the day of taking; and five times twenty-four hours must have elapsed from the time of the original seizure.

Time of sale.

The sale need not be by auction. But in order to divest the property in the goods out of the owner there must have been a sale (*King v. England*, 33 L. J. Q. B. 145.)

Sale by auction.

Upon the equity of the 2 W. & M. sess. 1, c. 5, s. 1, the distrainer must sell for the best price that can be obtained for the goods, and an action lies if he do not. The price at which the goods were appraised will be presumed to be the best until the contrary is proved. (*Walter v. Rumbal*, 4 Mod. 380; *Com. Dig. Distress* (D. 8).)

Price of sale.

It is not necessary that the sheriff or constable should be present at the sale, but the appraisers being regularly sworn, may with the distrainer proceed to sell. (*Walter v. Rumbal*, 4 Mod. 321; *Com. Dig. Distress* (D. 8).)

Sheriff or constable need not be present at.

Stat. 57 Geo. 3, c. 93, intituled "*An Act to regulate the Costs of Distresses levied for Payment of small Rents*," after reciting that "divers persons acting as brokers, and distraining on the goods and chattels

57 Geo. 3, c. 93.  
Costs of distress.  
Where rent due does not exceed 20*l.*

2. *Distress,  
how to be Sold,  
and Costs.*

57 Geo. 3, c. 93.

of others, or employed in the course of such distresses, have of late made excessive charges, to the great oppression of poor tenants and others; and it is expedient to check such practices," enacts, that "no person whatsoever making any distress for rent, where the sum demanded and due shall not exceed the sum of 20*l.* for and in respect of such rent, nor any person whatsoever employed in any manner in making such distress, or doing any act whatsoever in the course of such distress, or for carrying the same into effect, shall have, take, or receive out of the produce of the goods or chattels distrained upon and sold, or from the tenant distrained on, or from the landlord, or from any other person whatsoever, any other or more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the schedule hereunto annexed (*post*, p. 1163), and appropriated to each act which shall have been done in the course of such distress; and no person or persons whatsoever shall make any charge whatsoever for any act, matter, or thing mentioned in the said schedule, unless such act shall have been really done."

Remedy before a  
justice.

Sect. 2. If any person or persons whatsoever, shall in any manner levy, take or receive from any person or persons whatsoever, or retain or take from the produce of any goods sold for the payment of such rent, any other or greater costs and charges than are mentioned and set down in the said schedule, or make any charge whatsoever for any act, matter or thing mentioned in the said schedule, and not really done, it shall be lawful for the party or parties aggrieved by such practices to apply to any one justice of the peace for the county, city, town, and acting for the division where such distress shall have been made, or in any manner proceeded in, for the redress of his, her, or their grievances so occasioned; whereupon such justice shall summon the person or persons complained of to appear before him at a reasonable time to be fixed in such summons; and such justice shall examine into the matter of such complaint by all legal ways and means, and also hear in like manner the defence of the person or persons complained of; and if it shall appear to such justice that the person or persons complained of shall have levied, taken, received, or had other and greater costs and charges than are mentioned or fixed in the schedule hereunto annexed (see form, *post*, No. 17), or made any charge for any matter or thing mentioned in the said schedule, such act, matter, or thing not having been really done, such justice shall order and adjudge treble the amount of the monies so unlawfully taken, to be paid by the person or persons so having acted to the party or parties who shall thus have preferred his, her, or their complaint thereof, together with full costs; and in case of nonpayment of any monies or costs so ordered and adjudged to be paid, such justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the party or parties ordered to pay such monies or costs, rendering the overplus (if any) to the owner or owners, after the payment of the charges of such distress and sale; and in case no sufficient distress can be had, such justice shall, by warrant under his hand, commit the party or parties to the common gaol or prison within the limits of the jurisdiction of such justice, there to remain until such order or judgment be satisfied."

Penalty or dis-  
tress.

Imprisonment (a).

Justices may  
summon wit-  
nesses.

Sect. 3. It shall be lawful for such justice, at the request of the party complaining or complained against, to summon all persons as witnesses, and to administer an oath to them, touching the matter of such complaint or defence against it; and if any person or persons so summoned shall not obey such summons, without any reasonable or lawful excuse, or refuse to be examined upon oath, or if a Quaker,

(a) See "*Commitment in Execution.*"

upon solemn affirmation, then every such person so offending shall forfeit and pay a sum not exceeding 40s., to be ordered, levied, and paid in such manner and by such means, and with such power of commitment, as is hereinbefore directed as to such order and judgment to be given between the party or parties in the original complaint, excepting so far as regards the form of the order, and hereinafter provided for.

Sect. 4. It shall be lawful for such justice, if he shall find that the complaint of the party or parties aggrieved is not well founded, to order and adjudge costs, not exceeding 20s., to be paid to the party or parties complained against, (see form of order, *post*, No. 18,) which order shall be carried into effect, and levied and paid in such manner, and with like power of commitment, as is hereinbefore directed as to the order and judgment founded on such original complaint: Provided always, that nothing herein contained shall empower such justice to make any order or judgment against the landlord, for whose benefit any such distress shall have been made, unless such landlord shall have personally levied such distress: Provided always, that no person or persons who shall be aggrieved by any distress for rent, or by any proceedings had in the course thereof, or by any costs and charges levied upon them in respect of the same, shall be barred from any legal or other suit or remedy which he, she or they might have had before the passing of this act, excepting so far as any complaint to be preferred by virtue of this act shall have been determined by the order and judgment of the justice before whom it shall have been heard and determined, and which order and judgment shall and may be given in evidence, under the plea of the general issue, in all cases where the matter of such complaint shall be made the subject of any action.

Sect. 5. Such orders and judgments on such complaints shall be made in the form in the schedule hereunto annexed, and may be proved before any court by proof of the signature of the justice to such order and judgment; and such orders as regard persons who may have been summoned as witnesses shall be made in such form as to such justice shall seem most fit and convenient.

Sect. 6. Every broker or other person who shall make and levy any distress whatsoever, shall give a copy of his charges, and of all the costs and charges of any distress whatsoever, signed by him, to the person or persons on whose goods and chattels any distress shall be levied, although the amount of the rent demanded shall exceed the sum of 20*l*.

Sect. 7. A fair printed copy of this act shall be hung up in some convenient place in such halls or rooms where the justices of each and every county in England and Wales shall hold either their quarter or other sessions.

2. *Distress, how to be Sold, and Costs.*

57 Geo. 3, c. 93.  
Penalty.

If complaint unfounded, justice may give costs to party complained against.

Landlord not liable unless he personally levied distress.

Parties not barred of other legal remedies.

General issue.

Proof of justice's order.

Brokers to give copies of charges to persons distressed.

Copy of act to be hung up in sessions house.

#### SCHEDULE of the limitation of costs and charges on distresses for small rents.

Schedule of costs.

	£	s.	d.
Levying distress . . . . .	0	3	0
Man in possession, per day . . . . .	0	2	6
Appraisement, whether by one broker or more, 6 <i>d</i> . in the £1 on the value of the goods.			
Stamp, the lawful amount thereof.			
All expenses of advertisements, if any such . . . . .	0	10	0
Catalogues, sale and commission, and delivery of goods, 1 <i>s</i> . in the £1 on the net produce of the sale.			

The 7 & 8 Geo. 4, c. 17, extends the provisions of this act of 57 Geo. 3 to distresses for rates, taxes, impositions, and assessments.

7 & 8 Geo. 4, c. 17, extends 57 Geo. 3, to other distresses than for rent.

After a distress made by a broker in a case within the above act,



2. *Distress, how to be Sold, and Costs.*

the rent and charges may still be tendered to the landlord. (*Smith v. Goodwin*, 4 B. & Ad. 413; 2 N. & M. 114.)

The 6th section of the act, compelling brokers to give copies of their charges of distress, applies only to cases where the goods have been sold. (See *Hills v. Street*, 5 Bingh. 39.)

And a landlord who does not personally interfere in the distress is not liable for the neglect of the broker employed by him to make a distress, in not delivering a copy of the charges. (*Hart v. Leach*, 1 M. & W. 560.)

12 & 13 Vict. c. 92.  
Provision for  
impounded cattle  
by distress.

The 12 & 13 Vict. c. 92, s. 5, enacts, That every person who shall impound or confine, or cause to be impounded or confined, in any pound or receptacle of the like nature, any animal, shall provide and supply during such confinement a sufficient quantity of fit and wholesome food and water to such animal; and every such person who shall refuse or neglect to provide and supply such animal with such food and water as aforesaid shall for every such offence forfeit and pay a penalty of 20s.

Penalty.

Power to provide  
food, &c., for  
animals im-  
pounded.

Sect. 6. That in case any animal shall at any time be impounded and confined as aforesaid, and shall continue confined without fit and sufficient food and water for more than twelve successive hours, it shall and may be lawful to and for any person whomsoever, from time to time and as often as shall be necessary, to enter into and upon any pound or other receptacle of the like nature in which any such animal shall be so confined, and to supply such animal with fit and sufficient food and water during so long a time as such animal shall remain and continue confined as aforesaid, without being liable to any action of trespass or other proceedings by any person whomsoever, for or by reason of such entry for the purposes aforesaid; and the reasonable cost of such food and water shall be paid by the owner of such animal, before such animal is removed, to the person who shall supply the same, and the said cost may be recovered in like manner as herein provided for the recovery of penalties under this act.

17 & 18 Vict. c. 60.  
Persons who have  
impounded ani-  
mals, &c., since  
12 & 13 Vict. c. 92,  
may recover ex-  
penses for food  
supplied;

The 17 & 18 Vict. c. 60, s. 1, enacts that every person who since the passing of the twelfth and thirteenth years of her Majesty has impounded or confined, or hereafter shall impound or confine as in the said act mentioned, any animal, and has provided and supplied or shall hereafter provide and supply such animal with food and water as therein mentioned, shall and may and he is hereby authorised to recover of and from the owner or owners of such animal not exceeding double the value of the food and water so already or hereafter to be supplied to such animal, in like manner as is by the last mentioned act provided for the recovery of penalties under the same act; and every person who has supplied or shall hereafter supply such food and water shall be at liberty, if he shall so think fit, instead of proceeding for the recovery of the value thereof as last aforesaid, after the expiration of seven clear days from the time of impounding the same to sell any such animal openly at any public market (after having given three days' public printed notice thereof) for the most money that can be got for the same, and to apply the produce in discharge of the value of such food and water so supplied as aforesaid and the expenses of and attending such sale, rendering the overplus (if any) to the owner of such animal.

or after notice  
may sell animal.

10 & 11 Vict. c. 89.  
Stray cattle to be  
impounded.

The 10 & 11 Vict. c. 89, s. 24, " Towns Police Clauses Act," enacts that if any cattle be at any time found at large in any street within the limits of the special act, without any person having the charge thereof, any constable or officer of police or any person residing within the limits of the special act, may seize and impound such cattle in any common pound within the said limits, or in such other place as the commissioners appoint for that purpose, and may detain the same therein until the owner thereof pay to the commissioners a penalty

not exceeding forty shillings, besides the reasonable expenses of impounding and keeping such cattle.

Sect. 25. If the said penalty and expenses be not paid within three days after such impounding, the pound keeper or other person appointed by the commissioners for that purpose may proceed to sell or cause to be sold any such cattle; but previous to such sale seven days' notice thereof shall be given to or left at the dwelling house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisements, to be inserted seven days before such sale in some newspaper published or circulated within the limits of the special act; and the money arising from such sale, after deducting the said sums, and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping and sale of any such cattle so impounded, shall be paid to the commissioners, and shall be by them paid, on demand, to the owner of the cattle sold.

2. *Distress, how to be Sold, and Costs.*

Sale of cattle to defray expenses.

Sect. 26. Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this or the special act, or who pulls down, damages, or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence before any two justices, be committed by them to some common gaol or house of correction for any time not exceeding three months.

Offence of rescuing impounded cattle.

Punishment.

*Overplus.*—After complying with all the foregoing requisites, if there be any overplus, after paying the rent and charges of the distress, appraisement and sale, the same should be immediately left in the hands of the sheriff, undersheriff or constable of the hundred, parish or place where the distress was taken, for the owner's use, (see 2 W. & M. sess. 1, c. 5, s. 1.) otherwise a special action on the case will lie.

Overplus.

The overplus, which by the stat. 2 W. & M. sess. 1, c. 5, s. 2, is directed to be left in the hands of the sheriff, undersheriff, or constable, on a distress, for the owner's use, means the overplus after the payment of the rent and of the *reasonable* charges. Therefore, in an action on the case for not leaving the overplus in the hands of the sheriff, &c., for the plaintiff's use, the plaintiff may question the reasonableness of the charges. (*Lyon v. Tomkins*, 1 M. & W. 603.) And where the plaintiff herself received from the broker the balance remaining after payment of the rent and the actual charges, making no objection as to their reasonableness, it was held, that it was a question for the jury whether she accepted such balance in satisfaction, and if not, whether it was sufficient to satisfy the real balance; but that it was not correct to lay it down as matter of law that such payment and receipt substantially satisfied the requisitions of the statute. As to the goods remaining unsold the landlord may restore them to the premises from which he removed them, and leave any stranger claiming them to enforce his right against the tenant, for he is not bound to recognize the right of any third person to them. (*Evans v. Wright*, 27 L. J. Ex. 50; 2 H. & N. 527.)

Goods removed unsold.

### III. Replevying the Distress.

The replevy may be made at any time before the goods are actually sold. (*Jacob v. King*, 1 Marsh. 135; 5 Taunt. 457.)

Time of replevy.

As to the party to grant the replevin by stat. 1 & 2 P. & M. c. 12, s. 3, the sheriff of every county shall, at his first county day, or in

1 & 2 P. & M. c. 12. Who to grant replevin.

### 3. *Replevying the Distress.*

two months after he hath received the patent of office, appoint and proclaim in the shire town four deputies at the least, dwelling not above twelve miles one distant from another, to make replevies; on pain of 5*l.* for every month that he shall lack such deputy or deputies, half to the king and half to him that shall sue in any court of record.

Where the distress is made within a franchise, the lord of which has cognizance of plaints on replevin, the replevin must be granted by the lord. Thus where an action on the case was brought for distraining plaintiff's cattle on a farm, for rent due to D. for the farm, and selling them after a replevin was granted by the sheriff, and paying the proceeds to D., it was held a good plea that, from time immemorial, the farm has been parcel of the manor of F., and F. parcel of the honour and lordship of C., of which E. is the lord; and that from time immemorial E., and all whose estate, &c., have had cognizance of pleas and plaints in replevin, in the courts of the manor, to be holden from three weeks to three weeks, by plaints, to be there instituted; and have replevied and granted deliverance of cattle, &c., as the sheriff might, in his county, before the statute of Marlbridge; and that no sheriff, &c., might enter the honour except in default of the bailiff: that such court baron of the lord of the manor of F. had been, from time immemorial, holden from three weeks to three weeks; that E. made no default in replevying or granting deliverance of the cattle; that the sheriff, before he replevied, did not require E. to replevy or grant deliverance, and that none but the sheriff replevied or granted deliverance; and that the plea is good, although it does not allege that the cattle were impounded within the franchise. (*Mounsey v. Dawson*, 6 *Ad. & E.* 752.)

Surety to be taken on replevin.

The sheriff or other officer having authority to grant replevins (a), shall, in every replevin of distress for rent, take in his own name from the plaintiff and two sureties, a bond in double the value of the goods distrained, to be ascertained on the oath of one witness not interested in the goods, and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods distrained, in case a return shall be awarded, before any deliverance be made of the distress; and the sheriff shall assign such bond to the avouant or person making consuance. (11 Geo. 2, c. 19, s. 23) (b).

What cases within the act.

The bond may be taken and assigned by any officer who has power to grant replevin. (*Thompson v. Farden*, 1 *M. & Gr.* 535.)

A rent charge is within the statute. (*Short v. Hubbard*, 2 *Bingh.* 349; 2 *Moore*, 667; 10 *Moore*, 107, *S. P.* overruling *Bulpit v. Clarke*, 1 *New R.* 57.)

Form of bond, &c.

Although the statute directs the bond to be taken with two sureties, yet a bond by one surety only has been holden good (c). (*Austen v.*

(a) A party obtaining a replevy of goods under a false authority would be guilty of a rescous. *Trevannion's case*, 11 *Mod.* 32.

(b) *Avowry* is where one takes a distress, and the person distrained sues a replevin; then he that took the distress must *avow* and justify in his plea, for what cause he took it, if he took it in his own right; and this is called an *avowry*; if he took it in the right of another, then when he hath showed the cause, he must make *consuance* of the taking, as bailiff or servant to him in whose right he took it. *Ternes de la Ley*.

(c) In *Richards v. Acton*, a rule was made on the replevin clerk, the undersheriff, and the clerk of the county court, to discover the names of the pledges taken upon granting the replevin in this cause, and to show cause why they should not pay the defendant 5*l.* 15*s.*, being the damages and costs recovered by him in this cause, together with the costs of the application. The distress was for rent; and on replevin brought the defendant had a verdict with the damages and costs above mentioned. On cause being shown, the court held that as well the high sheriff and undersheriff as the replevin

*Howard*, 7 Taunt. 28, 327.) And at all events he is not bound to take more than one pledge on a replevin for distraining cattle damage feasant. (*Huckes v. Gordon*, 1 C. & M. 58.)

The words "then and there" usually inserted in the conditons of replevin bonds are not strictly proper. (*Jackson v. Hanson*, 8 M. & W. 477.) It is apprehended, however, that the insertion of them does not invalidate the bond.

Where a replevin bond was taken in a penalty greater than the amount of goods distrained, and with a clause in the condition to indemnify the sheriff for granting the replevin; and it appeared that the bond had been executed in September, and assigned in February, but no application to set it aside was made till Easter Term:—The court refused to set it aside on those grounds, but intimated that it was objectionable that the bond should be taken in such an amount; and that the frequent practice so to do, and the delay, were the only causes for not interfering to set it aside. (*Miers v. Lockwood*, 9 Dowl. 975.)

The sheriff having taken bond from the plaintiff in replevin as aforesaid, he ought forthwith to make deliverance of the goods or cattle distrained; and if the distress be drawn into a house or other stronghold, the sheriff or his bailiff, after demand made for deliverance of the distress, may break open the house to replevy them; for though a man's house is privileged by common law for himself, his family, and his own goods, so that the sheriff cannot break it open to attach any of them, in a civil action at the suit of a private person, yet a man's house could not privilege or protect the goods of another person unjustly taken, so as to prevent the officer to make replevin; because the privilege and security of a man's house could but protect his own goods. (2 Inst. 140.)

If the sheriff deliver up the goods to the party replevying the same without the security required by the 11 Geo. 2, c. 19, he is not liable to an attachment, but the landlord or defendant in replevin, if damaged, may have his remedy against him by action on the case. (*R. v. Lewis*, 2 T. R. 617.)

So the sheriff, undersheriff, and replevin clerk are all responsible to the landlord for the sufficiency of the sureties in the replevin bond, as also for the sufficiency of the pledges, under the stat. Westm. 2, c. 2; and an action on the case may be maintained against him if they or either be not sufficient sureties. (See *B. P. N.* 60.) But the sheriff is not liable if the sureties were to all appearances, and after his using reasonable diligence and inquiry, sufficient at the time, though it turn out afterwards otherwise. (*Hindle v. Blades*, 5 Taunt. 225: 1 Marsh. 27; *Scott v. Waithman*, 3 Stark. 168.) If a person known to the sheriff make inquiries as to the credit or reputation of a tradesman and the value of his stock, and communicate the result of such inquiry to the sheriff, if it be favourable, the latter need not make a personal inquiry. (*Sutton v. Waite*, 8 Moore, 28.) In taking sureties the sheriff is to exercise a reasonable discretion in deciding upon their sufficiency; and, in an action for taking insufficient sureties, it is for the jury to decide whether he has used such discretion or not. The sheriff or replevin clerk is not bound to go out of his office to make inquiries: but, if the sureties are unknown to him, he ought to require information, beyond their own statement, as to their sufficiency. Where persons of respectable appearance are brought to the replevin clerk as sureties, by the attorney's clerk on behalf of the party

### 3. Replevying the Distress.

Sheriff after bond taken, to make deliverance.

Neglect of sheriff to take security.

Liability of sheriff for taking insufficient sureties, &c

clerk (who is their deputy) are answerable to the defendant in replevin for the sufficiency of the pledges; they therefore discharged the rule against the county court clerk, but

with regard to the high and undersheriff, and the replevin clerk, they made the rule absolute. *Richards v. Acton*, 2 Bla. Rep. 1220.

### 3. *Replevying the Distress.*

replevying, their circumstances being known both to the attorney's clerk and to the replevin clerk, and the latter causes the sureties to make affidavit in detail as to their sufficiency, with which he is satisfied, and an action is afterwards brought against the sheriff for taking insufficient sureties, the jury may properly find that the inquiry made does not excuse the sheriff. (*Jeffery v. Bastard*, 4 A. & E. 823.) The sheriff is it seems liable, if one of the sureties was insufficient. (*Scott v. Waithman*, 3 Stark. 168.) In such action the penalty of the bond is the limit of damages. (*Jeffery v. Bastard*, 4 A. & E. 823; *Yea v. Lethbridge*, 4 T. R. 433; *Evans v. Brander*, 2 Bingh. 250; 2 H. Blac. 547.) If notice were previously given to the sheriff, it seems the costs of an ineffectual action against the sureties might be recovered. (See *Baker v. Garratt*, 3 Bingh. 56.)

### Assignment of bond.

The sheriff is directed by the above statute to assign the bond to the avowant or person making consuance (see *Dias v. Freeman*, 5 T. R. 195; *Middleton v. Sandford*, 4 Camp. 36; 1 B. & P. 378), in the same manner as a bail bond is assigned, and the party afterwards may bring an action on the bond if forfeited in his own name; and the court may by rule give such relief to the parties as may be agreeable to justice and reason. Where a replevin bond has been assigned, the assignee is not obliged to sue in the court into which the plaint has been removed by re. fa. lo. (*Nelson v. Hartley*, 7 Dowl. P. C. 461.) Where one of the sureties was a material witness for the plaintiff, the court of Common Pleas allowed another to be substituted for him. (*Bailey v. Bailey*, 1 Bingh. 92.) Taking an assignment of the replevin bond is not a waiver of the remedy against the sheriff, if the bond be not in compliance with the act, or the sureties were insufficient. (See 1 Saund. 195 e; *Baker v. Garratt*, 3 Bingh. 56; 10 Moore, 324, S. C.)

### Liability of sureties, and actions on the bond.

The condition in a replevin bond, for prosecuting the suit with effect, means the prosecuting it to a not unsuccessful termination. In a declaration in an action on a replevin bond, the breach assigned was, that the defendant did not appear at the next county court, and then and there prosecute his suit with effect. Held, that the breach was not well assigned, it being consistent therewith that the suit might have been begun at the next county court, and be still pending. (*Jackson v. Hanson*, 8 M. & W. 477.)

## IV. Rent in case of an Extent, or Execution.

### Rent in case of extent.

*Rent in case of Extent.*—In *R. v. Cotton*, T. 1755, it was determined by the barons of the exchequer, and affirmed on a writ of error, that if a distress be made for rent, and before the five days given by act of parliament have expired, an extent is issued, though it be not levied, for a debt due to the crown, the extent shall take place of the distress, because the distrainer neither gains a general nor a special property, nor even the possession of the cattle or things distrained. The distress is only a pledge in his hands for the rent. But the extent binds the property of the goods of the king's debtor from the teste of it. (*Park*, 112; and see *R. v. Hodder*, 4 Price, 313.) The landlord of the premises on which goods have been seized under an extent in aid is not entitled under the act of 8 Anne, c. 14, to call on the sheriff to pay twelve months' rent due before the teste of the writ. (*R. v. Decaux*, 2 Price, 17.)

### Rent in case of execution.

*Rent in case of an Execution.*—By stat. 8 Ann. c. 14, s. 1, no goods being on any messuage, lands or tenements, leased for life, term of

years, at will, or otherwise, shall be liable to be taken by execution, unless the party, at whose suit the execution is sued out, shall, before the removal of such goods from off the premises, pay to the landlord or his bailiff all such rent as shall be then due for the premises, provided that it amount not to more than one year's rent; and if the said arrears shall exceed one year's rent, then the party paying such landlord one year's rent may proceed to execute his judgment. This act is extended to process in Durham and Sadburge by 11 Geo. 4 & 1 Will. 4, c. 11.

According to this statute the sheriff is not bound to take the goods in execution unless the plaintiff in the action, before the removal of such goods, pays the landlord the rent due to the extent of one year's arrears at the time of the levy. (*Calvert v. Jolliffe*, 2 B. & Ad. 418; *Wray v. Earl of Egremont*, 1 N. & M. 190, and 4 B. & Ad. 122.)

If the sheriff does not comply with this act, he will be liable to an action at suit of the landlord. (*Palgrave v. Windham*, 1 Stra. 212; *Green v. Austin*, 3 Camp. 260; *Duck v. Braddyll*, M'Clell. 217; 13 Price, 455; *Rothery v. Wood*, 3 Camp. 24, on motion to the court.) But he will not be so liable, unless there be a demand for the rent before the removal by the party entitled to it. The sheriff is liable to the landlord for a year's rent, though the goods seized on the premises and sold were not the property of the execution debtor, and though the sheriff afterwards accounted for the proceeds with the real owner: for goods found on the premises are liable to be distrained, whether they are the property of a tenant or a stranger. (*Forster v. Cookson*, 1 A. & E. (N. S.) 419.)

4. *Rent in case of an Extent, or Execution.*

Arrears of rent to be first paid not exceeding one year's rent.

Liability of sheriff.

Landlord's claim for rent in arrear.

The sheriff is not bound to find out what rent is due to the landlord and pay it him, but the landlord must give him notice. (*Smith v. Taunton*, 3 Taunt. 400; *Arnitt v. Garnett*, 3 B. & Al. 440.) No particular form of notice is requisite. (*Andrews v. Dixon*, 3 B. & Al. 645; *Colyer v. Speer*, 4 Moore, 473; 2 Brod. & B. 67.)

In *Arnitt v. Garnett* (3 B. & Al. 440), the court, on motion, ordered a year's rent out of the proceeds, while in the sheriff's hands, to be paid to the landlord, though the sheriff had no notice of the rent being due till after the removal. But an action for money had and received could not be sustained against him. (*Green v. Austin*, 3 Camp. 260.)

A demand on the sheriff by a person to whom administration is afterwards granted will not operate by relation. (*Waring v. Dewberry*, 1 Stra. 79; *Smith v. Russell*, 3 Taunt. 400.)

The sheriff must satisfy the landlord in the first instance, (*Colyer v. Speer*, 4 Moore, 473); and before the removal of any part of the goods. (*Id.*; 2 B. & B. 57; *Calvert v. Jolliffe*, 2 B. & Ad. 418.) A bill of sale is a removal. (*West v. Hedges*, Barnes, 211.) No deduction for poundage can be made from the rent. (*Gore v. Gofton*, 1 Stra. 643.)

There must be a subsisting tenancy to entitle the landlord to the rent. (*Hodgson v. Gascoigne*, 5 B. & Al. 88.) In an agreement for assigning a lease for a sum of money, to be paid on or before a distant day, the lessee agreed to make some alterations on the premises, which his assignee was to occupy, paying until the completion of the assignment "at the rate of 100*l.* per year, in half-yearly payments." The lessee afterwards agreed to allow 12*l.* for some of the alterations he ought to have made, the rest were never completed, and the assignee paid in advance 10*l.* It was held that the sheriff levying on the goods of the assignee under a *fi. fa.*, was bound to pay over to lessee half a year's rent due, and that the 12*l.* and 10*l.* were in part payment of rent, as they were intended to be allowed out of the first payment due by the assignee to the lessee. (*Saunders v. Musgrave*, 6 B. & C. 524; 2 C. & P. 294.)

When landlord entitled.

4. Rent in case of an Extent, or Execution.

The landlord to be entitled to the rent, must also be the immediate one, and not the ground landlord. (*Bennet's case*, 2 *Stra.* 787.)

An executor or administrator is entitled to arrears accrued in the testator's lifetime (*Palgrave v. Windham*, 1 *Stra.* 212); and so is a trustee of an outstanding satisfied term in trust for mortgagees. (*Colyer v. Speer*, 4 *Moore*, 473, and 2 *B. & B.* 67.)

The statute extends to an execution at the suit of the defendant for costs. (*Henchett v. Kimpson*, 2 *Wils.* 140.) But a commission of bankruptcy is not an execution within the statute. (*Lee v. Lopes*, 15 *East*, 230.) Goods taken on a *capias utlagatum* are within it. (*Bumb.* 5, 194, 269; 7 *T. R.* 284.) So are goods taken on a *pone per vadios*, issuing out of the court of pleas of Durham; in which case the goods are forfeited to the bishop, who afterwards assigns them over to the party. (*Brandling v. Barrington*, 6 *B. & C.* 467.)

In the case of two executions, there shall not be two years' rent paid to the landlord; for the intent of the act was to reserve to the landlord only the rent for one year, and it was his own fault if he let more run in arrear. Therefore one year's rent to the landlord being paid to him on the first execution, the sheriff is not to levy for him again any thing on a subsequent execution. (*Dod v. Saxby*, 2 *Stra.* 1024; *Peacock v. Purvis*, 2 *B. & B.* 362, and 5 *Moore*, 79; *Wright v. Dewes*, 3 *N. & M.* 790; 1 *A. & E.* 641); unless perhaps the goods be not removed in a reasonable time. (*Guilliam v. Barker*, 1 *Price*, 277; *Blades v. Arundale*, 1 *M. & Sel.* 711.)

The landlord's claim under the statute may be supported for fore-hand rent. (*Harrison v. Barry*, 7 *Price*, 690.) So for rent that falls due on the day of the levy. (*Tidd*, 8 ed. 1054.) But rent arising after the seizure under the execution is not within the act, and cannot be deducted. (*Hoskins v. Knight*, 1 *M. & Sel.* 245.) A sheriff taking corn in the blade under a *fi. fa.*, and selling it before rent due, is not liable to account to the landlord of the defendant under this act of Anne, for rent accruing subsequently to the levy and sale, although he has given notice, and though the corn be not removed from the premises until long afterwards, when a considerable portion of rent has become due; the landlord's remedy in such case is by distress. (*Guilliam v. Barker*, 1 *Price*, 274.)

## V. Of Rescous and Pound Breach.

Rescous and pound breach.

By the common law, if a man break the pound or the lock of it, or part of it, he greatly offendeth against the peace, and doth trespass to the king, and to the lord of the fee, and to the sheriff, and hundredors, in breach of the peace, and to the party, and to the delaying of justice; and therefore hue and cry is to be levied against him, as against those who break the peace. (*Mir. c. 2*, s. 26.)

Recaption.

And the party who distrained may take the goods again, wheresoever he shall find them, and impound them again. (1 *Inst.* 47.)

Breaking open doors in pursuit.

But it seems he cannot break open the house, or enter the grounds of a third person for that purpose, at any rate unless on fresh pursuit, (see *Francombe v. Pinche*, *Esp. N. P.* 396, 6th edit.; *Rich v. Woolley*, 7 *Bing.* 651; *Russell v. Rider*, 6 *C. & P.* 416); and he must not be guilty of any breach of the peace in such recaption.

Actual force not necessary to constitute offence of pound breach.

It seems that actual force is not necessary to constitute the offence of pound breach. Thus where an attorney assuming upon himself an authority to grant a replevin, when he had none, granted a replevin in his own cause, he was considered guilty of a pound breach. (*Trevanion's case*, 11 *Mod.* 32.)

What is a rescous.

Where a man hath taken distress and the cattle distrained, as he is driving them to the pound, go into the owner's house, if he that

took the distress demand them of the owner and he deliver them not, this is a rescous in law. (1 *Inst.* 161; 6 *Bac. Abr.* tit. "Rescue," (A.))

5. Of Rescous  
and Pound  
Breach.

There can, however, be no rescous but where the party has had the actual possession of the cattle or other things whereof the rescous is supposed to be made; for if a man come to arrest another or to distrain, and be disturbed regularly, his remedy is by action on the case. (1 *Inst.* 161; 6 *Bac. Abr.* 87; and authorities there cited.)

If a hayward take cattle which are straying in a common or lane, and they are rescued as he is taking them to the pound, this rescue is indictable; but if the hayward take cattle which are damage feasant in the inclosed land of any private occupier, the rescue of them before they get to the pound is not indictable; as in the latter case, till the cattle get to the pound, the hayward is to be considered the mere servant of the occupier. (*Rex v. Bradshaw*, 7 *Car. & P.* 233.)

If a distress be taken without cause, before it is impounded the party may make a rescous, but if it be impounded he cannot justify the breach of the pound to take it out of the pound, because the distress is then in the custody of the law; if, however, the pound be unlocked, it seems he may take it; (see *B. N. P.* 61;) or if the distress be abused as by working it, the owner may interfere to prevent it. (*Smith v. Wright*, 30 *L. J. Ex.* 313.)

When justified.

The forcibly rescuing goods distrained, and the rescuing cattle by the breach of the pound in which they have been placed, have been considered as offences at common law, and indictable as such (1 *Russ.* 363); and it would seem that the indictment will lie though there was no actual breach of the peace; for though a mere trespass, without circumstances of violence, is not indictable, yet a pound breach, or rescue, is an injury and insult to public justice. (2 *Chit. C. L.* 204, note (B); 1 *Russ.* 363.)

An indictable  
offence.

By 6 & 7 Vict. c. 30, "An Act to amend the Law relating to Pound-breach and Rescue in certain Cases," reciting that, it frequently happens that cattle which are lawfully impounded, or which are lawfully seized for the purpose of being impounded, are rescued from the pound or place in which they are so impounded, or on the way to or from such pound or place, and the expense of prosecuting such offenders, or obtaining redress for the injury occasioned by such rescue to the persons so entitled to distrain, is usually out of proportion to the damage for which such cattle are distrained; and whereas it is expedient for remedy thereof, to enable two or more of her Majesty's justices of the peace to try such offenders in a summary way, and award such redress as hereinafter mentioned to the persons on whose behalf the cattle so rescued shall have been distrained; it is enacted, that in case any person or persons shall release or attempt to release any horse, ass, sheep, swine, or other beast or cattle, which shall be lawfully seized for the purpose of being impounded, in consequence of having been found wandering, straying, or lying or being depastured on any inclosed land without the consent of the owner or occupier of such inclosed land, from the pound or place where the same shall be so impounded, or on the way to or from any such pound or place, or shall pull down, damage, or destroy the same pound or place, or any part thereof, or any lock or bolt belonging thereto, or with which the same shall be fastened, every person so offending shall, upon conviction thereof before any two of her Majesty's justices of the peace, forfeit and pay any sum not exceeding 5*l.*, together with reasonable charges and expenses, or in default thereof be committed by such justices, by warrant under their hands and seals, to the house of correction of the county wherein the said offence shall have been committed, there to be kept to hard labour for any time not exceeding three calendar months nor less than fourteen days, unless such sum of

6 & 7 Vict. c. 30:  
Summary remedy  
before justices.

Persons releasing  
or attempting to  
release cattle im-  
pounded, or da-  
maging any  
pound, &c., upon  
conviction before  
two justices, to  
forfeit 5*l.* and ex-  
penses, and in de-  
fault of payment  
to be imprisoned.



5. *Of Rescous  
and Pound  
Breach.*

6 & 7 Vict. c. 30.  
Justices not to  
hear cases where  
questions of title  
arise, or as to any  
bankruptcy.

Summonses may  
be issued against  
offenders, who, on  
proof on oath of  
one or more wit-  
nesses before two  
justices, shall be  
convicted in  
penalty and costs.

Offenders may be  
apprehended by  
a warrant of  
justices.

Highways.

money and costs as aforesaid shall be sooner paid; and it shall be lawful for the said justices to award the whole or any portion of such penalty to the person or persons on whose behalf such cattle were distrained.

Sect. 2. That nothing herein contained shall authorise any justices of the peace to hear and determine any case of pound breach or rescue in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice, or as to the obligation of maintaining, repairing, or keeping in repair any wall, hedge, paling, ditch, sunk fence, or fence whatsoever.

Sect. 3. That it shall and may be lawful to and for any justice of the peace, upon information or complaint (a) being made upon oath before him by any person of any offence against the provisions of this act, to summon the party accused to appear before any two justices of the peace within whose jurisdiction the offence shall have been committed, at a time and place to be named in such summons, and upon the appearance of such party, or in his absence in case he shall not appear according to the tenor of such summons, any such justices before whom such party shall have been so summoned to appear shall and may (upon proof of the service of such summons) proceed to examine into the matter, and upon due proof made of such having been committed, either by confession of the party accused, or upon the oath of one or more credible witness or witnesses, to give judgment or convict for the penalty and costs (as the case may be).

Sect. 4. That every such justice of the peace may, without issuing any summons, forthwith issue his warrant to any constable for the apprehension of any person charged under this act, whenever good grounds for so doing to his satisfaction shall be stated on oath before him.

The 5 & 6 Will. 4, c. 50, s. 75, ("*Highways*," ) imposes a penalty on persons breaking the pound to rescue cattle and animals found trespassing on highways.

As to the punishment, &c. of persons guilty of a pound breach on a distress made under a Turnpike Act, see 3 Geo. 4, c. 126, s. 123; "*Highways*," "*Turnpike*."

## VI. Forms.

No.

1. Complaint on 11 Geo. 2, c. 19, s. 3, before a justice where goods being fraudulently removed and secured in a dwelling-house, to prevent them from being taken as a distress for rent.
2. Warrant thereon to follow and search for goods fraudulently removed to prevent a distress.
3. Complaint on stat. 11 Geo. 2, c. 19, s. 4, before a justice where goods clandestinely removed, in order to commit the offenders.
4. Warrant thereon to summon the parties concerned.
5. Order of justices thereon.
6. Warrant of distress in case the offenders having notice neglect or refuse to pay pursuant to the preceding order.
7. Constable's return thereon of want of distress.
8. Commitment thereon to house of correction.

(a) See Form 16, *post*.

9. Recognizance on appeal against a conviction by two justices for fraudulently assisting to convey goods off the premises to avoid a distress.
10. Warrant of distress.
11. Inventory of goods.
12. Notice of distress.
13. Appraiser's oath.
14. Form of the appraisement.
15. Consent for distrainer to continue in possession.
16. Information for a rescous and pound breach at common law.
17. Order and judgment for taking too much costs where the order and judgment is for the complainant.
18. The like, where justice dismisses the complaint as unfounded, and with or without costs.

## 6. Forms.

— } *BE it remembered, that, this*                      *day of,*                      *A. D.*                      *, A. I.,* (1.) Complaint on  
     *of*                      *, yeoman, complaineth and maketh oath that certain goods*  
*and chattels of A. O., of*                      *, yeoman, have within thirty days last past*  
*been fraudulently and clandestinely conveyed and carried away from*  
*by the said A. O., his servant or servants, agent or agents, or other person or*  
*persons, aiding or assisting therein, to prevent A. B. from distraining the said*  
*goods and chattels for arrears of rent due to the said*                      *for the said*  
*and that the said goods and chattels are put, placed, or kept in the house [barn,*  
*stable, outhouse, yard, close, or other place] of*                      *, at*                      *, locked up,*  
*fastened, or otherwise secured so as to prevent the said goods and chattels from*  
*being taken and seized as a distress for arrears of rent: and that the said A. I.*  
*hath a reasonable ground to suspect, and doth suspect, that the said goods and*  
*chattels are in the [dwelling-house] of the said*                      *, at*  
*Taken and sworn at*                      *, the*                      *day of*                      *before A. I.*

— } *To all constables, and other her Majesty's officers of the peace, whom* (2.) Warrant  
     *to wit. } these may concern.*                      *thereon to follow*  
     *WHEREAS A. B., of, &c., hath this*                      *day of*                      *exhibited his com-*  
     *plaint and made oath before me, J. P., one of her Majesty's justices of the*  
     *peace for the said county of*                      *, that certain goods and chattels of E. F.*  
     *have been within thirty days last past fraudulently and clandestinely conveyed*  
     *and carried away from a certain [house] and premises, situate, &c., by the said*  
     *E. F., his servant or servants, agent or agents, or other person or persons aiding*  
     *or assisting therein, to prevent the said A. B. from distraining the said goods*  
     *and chattels for arrears of rent due from the said E. F. to the said A. B. for*  
     *the said house and premises. And that the said goods and chattels are put,*  
     *placed, and kept in the house, [barn, stable, outhouse, yard, close], or other place*  
     *of the said E. F. [or "of J. H."] situate and being in, &c., in the parish of*  
     *&c., within the said county, locked, fastened, or otherwise secured, so as to pre-*  
     *vent the said goods and chattels from being taken and seized as a distress for*  
     *arrears of rent; and that the said A. B. hath a reasonable ground to suspect,*  
     *and doth suspect, that the said goods and chattels are in the said house [barn,*  
     *&c.] of &c. These are therefore to command you, and each and every of you, to*  
     *aid and assist the said A. B., his steward, bailiff, receiver, or other person or*  
     *persons empowered to take and seize as a distress for rent the said goods and*  
     *chattels, in the daytime, to break open and enter into the said house, [barn,*  
     *stable, outhouse, yard, close], or other place of the said &c., at &c., aforesaid,*  
     *and to take and seize the said goods and chattels for the said arrears of rent,*  
     *according to law.*

*Given under my hand and seal, at &c., the*

*day of, &c.*

*J. P. (L. S.)*

## 6. Forms.

(3.) Complaint on stat. 11 Geo. 2, c. 19, s. 4, before a justice, where goods clandestinely removed, in order to summon the offenders (*ante*, 1157).

— } *BE it remembered, that this*      day of      , *A. B., being owner of*  
       *certain premises at*      , *hath complained in writing that A. T. of*  
       *[yeoman] hath fraudulently and clandestinely removed and conveyed*  
       *away certain goods and chattels of the said A. T. not exceeding the value of 50l.*  
       *from premises at the said*      *to prevent the said A. B. from distraining the*  
       *said goods and chattels for arrears of rent due to the said A. B. from the said*  
       *A. T. as tenant to the said A. B. for the said premises. And that A. O. of*  
       *[yeoman], and B. O. of*      *[labourer], wilfully and knowingly aided*  
       *and assisted the said A. T. in so fraudulently and clandestinely removing*  
       *and conveying away the said goods and chattels and in concealing the same ;*  
       *contrary to the form of the statute in such case made and provided.*

A. B.

*Exhibited at*      *the*      *day of*      *before me*      *esquire, a*  
*justice of the peace of*      *residing near the place whence the said goods and*  
*chattels were removed, and not being interested in the said premises whence such*  
*goods and chattels were removed (a).*

(4.) Warrant thereon to summon the parties concerned.

— } *To the constable of*      *and others whom this may concern.*

*WHEREAS a complaint in writing hath been this*      *day of*  
*exhibited before me J. P., esq., a justice of the peace for the said county (residing*  
*near the place whence the goods and chattels hereinafter mentioned were removed*  
*[or, "near the place whence the goods and chattels hereafter mentioned were*  
*found"], not being interested in the premises whence the same were removed) by*  
*A. B. of*      *gentleman, setting forth that A. T. of*      *yeoman, hath*  
*fraudulently and clandestinely removed and conveyed away certain goods and*  
*chattels of the said A. T. not exceeding the value of 50l. from the premises at,*  
*&c., belonging to the said A. B., to prevent the said A. B. from distraining the*  
*said goods and chattels for arrears of rent due to the said A. B. from the said*  
*A. T. for the said premises. And that A. O. of*      *[yeoman], and B. O.*  
*of*      *[labourer], wilfully and knowingly aided and assisted the said A. T.*  
*in so fraudulently and clandestinely removing and conveying away the said*  
*goods and chattels, and in concealing the same ; against the form of the statute*  
*in such case made and provided. These are therefore to command you forthwith*  
*to summon the said A. T., A. O., and B. O., to appear before two or more*  
*justices of the peace at*      *on the*      *day of*      *at the hour of*  
*to answer the matter of the said complaint. Given under my hand*  
*and seal at*      *the*      *day of*

J. P. (L. S.)

(5.) Order of justices thereon (b).

— } *BE it remembered, that on the*      *day of*      , *in the year of*  
       *our Lord*      , *at*      , *in the county of*      , *A. L., of,*  
       *&c., gentleman, [if the complaint is exhibited by the bailiff, servant, or agent*  
       *of the landlord, say, "bailiff, servant," or "agent," as the case may be, "of*  
       *A. L., of*      , *in the county of*      , *gentleman"], in his own person*  
       *came before me, [or "us"], J. P., esquire, one [or "two"] of her Majesty's*  
       *justices of the peace in and for the said county, residing near the place whence*  
       *the goods and chattels hereinafter mentioned were removed, [or, if the proceed-*  
       *ings are before justices residing near the place where the goods and chattels*  
       *were found, say, "residing near the place where the goods and chattels hereinafter*  
       *mentioned were found"], we or either of us not being interested in the*  
       *[here describe the place whence such goods and chattels were removed, as*  
       *a "messuage," "dwelling-house," "cottage," "close," &c., as the case may be,*  
       *or say, "in the land or premises whence the goods and chattels were removed as*  
       *hereinafter mentioned"], and [if the complaint is exhibited by the bailiff,*  
       *servant, or agent of the landlord, say, "at the instance and on the behalf of the*  
       *said A. L.,"] informed me, [or "us"] in writing, that A. T., of the parish of*  
       *, in the county of*      , *yeoman, [naming the tenant], for [the*  
       *half of,] a year next before and ending at and upon the [25th day of December,]*  
       *in the year of our Lord*      , *held and enjoyed a certain [here shortly*  
       *describe the premises] and premises, with the appurtenances, situate in the*

(a) By the 11 & 12 Vict. c. 43, the information may be laid before one justice only.  
 (b) See *R. v. Davis*, 5 B. & Ad. 551.

parish of \_\_\_\_\_, in the county of \_\_\_\_\_, as tenant thereof to the said A. L. under a demise thereof theretofore made, at the yearly rent of \_\_\_\_\_, payable to the said A. L. [half-yearly], to wit, on the [24th day of June and the 25th day of December], by even and equal portions; and that on the said [25th day of December], in the said year of our Lord \_\_\_\_\_, the sum of \_\_\_\_\_ of the rent aforesaid, [for the half of a year] ending on the said [25th day of December], in the said year of our Lord \_\_\_\_\_, on that day in that year became and was, and still is due, in arrear, and unpaid from the said A. T. to the said A. L.: and that the said sum of \_\_\_\_\_ of the rent aforesaid so being due, in arrear, and unpaid from the said A. T. to the said A. L., the said A. T. afterwards, that is to say, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, [and on divers other days and times afterwards, and before the day of exhibiting the said information], fraudulently and clandestinely conveyed away and carried off and from the said demised premises divers goods and chattels, that is to say, one, &c. [describe the goods removed and carried away, but perhaps this is not absolutely requisite], being the goods and chattels of the said A. T., and the same not exceeding the value of 50l., but being of less value, to wit, of the value of \_\_\_\_\_ of lawful money of Great Britain, to prevent the said A. L. from distraining the same for the said arrears of rent, [if the complaint be against a third person for assisting the tenant in such fraudulent carrying off his goods, say, "and that A. O., of the parish aforesaid, in the county aforesaid, labourer, on the same day and year last aforesaid, at the parish aforesaid, in the county aforesaid, did wilfully and knowingly aid and assist the said A. T. in such fraudulent and clandestine conveying away and carrying off and from the said demised premises the said goods and chattels and every part thereof," or, if the complaint against such third person is for concealing the goods so fraudulently carried off the premises, say, "and that A. O., of the parish aforesaid, in the county aforesaid, labourer, afterwards, and after the said goods and chattels were so fraudulently and clandestinely conveyed away and carried off and from the said demised premises as aforesaid, to wit, on the same day and year last aforesaid, at the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, did wilfully and knowingly aid and assist the said A. T. in concealing the said goods and chattels and every part thereof"] contrary to the form of the statute in such case made and provided; whereby and by force of the said statute the said A. O. hath forfeited and become liable to pay to the said A. L., from whose estate the said goods and chattels were so fraudulently and clandestinely carried off as aforesaid, double the value of the said goods so by him carried off [or "concealed"] as aforesaid. Whereupon the said A. T. and A. O., after being duly summoned to answer the said charge contained in the said information, appeared on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the said county, before us the said J. P. and K. P., being two of her Majesty's justices in and for the said county, and residing near the place whence [or "where"] the said goods and chattels were removed [or "found"], and not being either of us interested in the said premises whence the said goods and chattels were removed, and having heard the charges contained in the said information, declared that they were not guilty of the said offences so respectively charged against them as aforesaid [or as the case may happen to be]. \*Whereupon we the said justices did proceed to examine into the truth of the charges contained in the said information, and on the \_\_\_\_\_ day of \_\_\_\_\_ aforesaid, at the parish of \_\_\_\_\_ aforesaid, one credible witness, to wit, A. W., of \_\_\_\_\_, in the county of \_\_\_\_\_, yeoman, upon his oath deposeth, and saith, in the presence and hearing of the said A. T. and A. O., that [here state the evidence, as nearly as possible in the words used by the witness (a)]. It will be necessary to have proof of the particulars of

(a) The evidence need not now be stated; and see *ante*, 1159, and the forms given by 11 & 12 Vict. c. 43 for orders and convictions. It will be necessary to support the order by proof of the particulars of the demise; the amount of the rent in arrear; the fact of removing the goods, and the circumstances of privacy or fraud attending it; if the complaint is against a third person for assisting, the fact of

such assistance and its particular manner; or if the complaint against such third person is for concealing the goods or chattels so fraudulently conveyed away by the tenant, the fact of concealing such goods and chattels, and which of them in particular, and the place where they were found so concealed; and, lastly, the value of the goods so removed and carried away or concealed.

## 6. Forms.

the demise, the amount of the rent in arrear, the fact of removing the goods, and the circumstances of privacy or fraud attending it; and if the complaint is against a third person, for assisting, the fact of such assistance, and its particular manner; or if the complaint against such third person is for concealing the goods and chattels so fraudulently conveyed away by the tenant, the fact of concealing such goods and chattels, and which of them in particular, and the place where they were found so concealed, and lastly the value of the goods so removed and carried away or concealed.] *And we the said justices thereupon having duly examined into the facts and the truth of the said charges, and having examined all proper and credible witnesses upon oath, do hereby determine that the said A. T. is guilty of the said offence so charged against him as aforesaid, and that the said A. O. is also guilty of the said offence so charged against him as aforesaid. And we the said justices, having duly inquired into the value of the said goods and chattels so removed, conveyed away, and carried off as aforesaid, do find that the value of the same was and is 20l. : Wherefore we the said justices do hereby order and adjudge the said A. T. and A. O. to pay unto the said A. L. [or to his bailiff, servant, or agent] the sum of 40l., (being double the value of the said goods and chattels), on or before the day of instant. Given under our hands and seals, at , the day of , A.D. .*

(6.) Warrant of distress in case the offenders, having notice, refuse or neglect to pay pursuant to the preceding order.

— } To the constable of , and others whom this may concern.

*WHEREAS, on the day of , at , A. L., of , gentleman, &c. [proceed as in the order No. 5 to the \* in the past tense, and then thus:] Whereupon we the said justices, having examined into the facts and the truth of the said charges, and having duly examined all proper and credible witnesses upon oath, did, upon the said hearing of the said charges on the day of last, determine that the said A. T. was guilty of the said offence so charged against him as aforesaid, and that the said A. O. was also guilty of the said offence so charged against him as aforesaid. And having thus inquired into the value of the said goods and chattels so removed, conveyed away, and carried off as aforesaid, did then find that the value of the same was 20l., and we did therefore then order and adjudge that the said A. T. and A. O. should pay unto the said A. L. the sum of 40l., being double the value of the goods and chattels, on or before the day of now last past. † And whereas the said A. T. and A. O., having due notice of our said order, have refused and neglected to pay, and have not paid the said sum of pursuant thereto, and the same hath been fully proved before us, these are therefore to command you to levy the said sum of by distress and sale of the goods and chattels of the said A. T. and A. O. : and we do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within days, unless the said sum of , for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid (a); and you are also hereby commanded to certify to us what you shall do by virtue of this our warrant. Given under our hands and seals at the day of .*

(7.) Constable's return thereon of want of distress.

— } I, A. C., constable of , do hereby certify and , justices of the peace of , that I have made diligent search for, but do not know of nor can find any goods and chattels of , and and , or of any of them, by distress and sale whereof I may levy the sum of , pursuant to their warrant for that purpose. Dated the day of . Given under my hand this day of .

(8.) Commitment thereon to house of correction (b).

— } To the constable of , and also to the keeper of the house of correction at , in the county of .

*WHEREAS, &c. [proceed as in the form No. 6 to the †, and then thus:] And whereas it appears to us by the return of , constable of , dated the day of , that he hath made diligent search for, but doth not know*

(a) 27 Geo. 2, c. 20, ante, p. 1152. Law J., N. S., M. C., 141.  
See *Coster v. Wilson*, 3 M. & W. 411, (b) See stat. 11 Geo. 2, c. 19, ss. 5  
ante, 1159, and *Ex parte Fuller*, 13 and 6, ante, p. 1157.

of nor can find any goods and chattels of the said A. T., and J. O. and L. O., or any or either of them, by distress and sale whereof the said sum of may be levied, pursuant to our warrant duly made and issued for the levying the said sum of by distress and sale of the goods and chattels of the said A. T., and J. O. and L. O. These are therefore to command you the said constable of to apprehend the said A. T., and J. O. and L. O., and convey them to the said house of correction at aforesaid, and deliver them there to the said keeper of the said house of correction; and these are also to command you the said keeper of the said house of correction to receive them the said A. T., and J. O. and L. O., into the said house of correction, and there keep them to hard labour, without bail or mainprize, for the space of six months, unless the said sum of so ordered to be paid as aforesaid shall be sooner satisfied. Given under our hands and seals at , the day of .

6. Forms.

— } BE it remembered, that, on the day of , in the year of (9.) Recognizance  
the reign of our sovereign lady Victoria, by the grace of God, of the on appeal against  
United Kingdom of Great Britain and Ireland Queen, defender of the faith, a conviction by  
C. D., of , in the said county, [farmer], and E. F., of , in the said two justices for  
county , [farmer], personally came before us, J. P. and K. P., Esquires, fraudulently  
two of her Majesty's justices of the peace in and for the said county, and assisting to con-  
and acknowledged themselves to owe to our said lady the Queen the sum of (a),vey goods off the  
to be levied of their goods and chattels, lands and tenements, to the use of our premises to avoid  
said lady the Queen, her heirs and successors, if the said C. D. shall make a distress (a).  
default in the condition following:

The condition of this recognizance is such, that whereas the said C. D. is this day duly convicted before us, the above-named justices of the peace, of having wilfully and knowingly aided and assisted G. H., of &c., [farmer], on the day of last, in fraudulently and clandestinely removing and conveying away the goods and chattels of the said B. O. from [describing the place, house, tenement, &c., and the parish where situate, &c.], not exceeding the value of 50l., and in concealing the same, so as to prevent A. B., of &c., from taking and seizing the same for arrears of rent due to the said A. B. from the said G. H. for certain premises, situate at , aforesaid; for which offence the said C. D. has been adjudged to forfeit to the said A. B. the sum of , being double the value of the said goods and chattels by the said C. D. so carried off and concealed: now if the said C. D. shall personally appear at the next [quarter sessions] of the peace to be held at , for the said county of , and commence and prosecute an appeal against the said conviction, and pay such costs as shall be then and there awarded by the said court against the said C. D., and not depart without leave of the court, then this recognizance to be void.

Acknowledged before us, J. P.  
K. P.

I DO hereby authorise you, A. B. of , in the county of , to (10.) Warrant of  
distrain the cattle, goods, and chattels of A. T. of , in the said county, distress.  
in the premises [or as the case may be] which he holds of me, situate in the parish aforesaid, in the county aforesaid, for arrear of rent due to me for the said premises at last past; and for your so doing this shall be a sufficient warrant. Witness my hand the day of .

AN inventory of the several cattle, goods, and chattels distrained by us whose (11.) Inventory of  
names are underwritten, the day of , in the year , in goods.  
the premises of A. T. in , by the authority and on the behalf of A. L.  
of , for pounds arrear of rent due to him the said A. L.

In the dwelling-house:

One table,  
Six chairs, &c.

In the cow-house:

Six cows,  
Two calves, &c. [and so on as the case may be].

(a) The amount must be double the sum ordered to be paid by the conviction. See the 11 Geo. 2, c. 19, s. 6, ante, p. 1157.

## 6. Forms.

## (12.) Notice (a).

A. T.

TAKE notice, that by the authority and on the behalf of your landlord, A. L., I have this            day of           , in the year of our Lord           , distrained the several [cattle,] goods, and chattels specified in the schedule hereunto annexed in your premises at            for            pounds arrears of rent due to him the said A. L.; and if you shall not pay the said rent so due and in arrear as aforesaid, or replevy the said [cattle,] goods, and chattels, I shall, after the expiration of five days from the date hereof, cause the said [cattle,] goods, and chattels to be appraised and sold according to the statute in that case made and provided. Given under my hand the day and year first above written.

A. D.

Witness that a copy hereof was this  
day delivered to the said A. T.  
[or left at the chief mansion-house  
of the said A. T.] A. W.

## (13.) Appraisers' oath.

YOU and each of you shall well and truly appraise the goods and chattels mentioned in this inventory, according to the best of your understanding: So help you God.

## (14.) Form of the appraisement.

The appraisement may be in the form of the inventory, specifying the particulars and their respective valuation: and then add at the end, Appraised by us this            day of           , in the year           .

A. P. }  
B. P. } Sworn Appraisers.

## (15.) Consent for distrainer to continue in possession.

But if the tenant request the landlord to give further time for selling the goods distrained, and the landlord consent, it is best for the tenant to sign a memorandum thereof to the following effect:—

I A. T. do hereby request that A. L. my landlord, who, on the            day of            last, distrained my [cattle,] goods, and chattels on my premises at           , in the county of           , will forbear the sale thereof until the            day of            next, in order to enable me to discharge my said rent; and I do consent that the said [cattle,] goods, and chattels so distrained may remain at my proper cost and in his possession upon the premises where they now are until that time, and I undertake not to replevy the said [cattle,] goods, and chattels. In witness whereof I have hereunto set my hand the            day of           .

Witness, A. W.

A. T.

## (16.) Information for a rescous and pound breach at common law.

THE information and complaint of A. I., constable of           , [as the case may be], in the said county, taken and made upon oath before me, J. P., Esquire, one of her Majesty's justices of the peace in and for the said county, the            day of           , in the year of our Lord one thousand eight hundred and           ; who says, that, as constable of the said parish of           , [or "barliff," &c., or as the case may be], he received a warrant under the hand and seal of E. E., Esquire, [or "me," as the case may be], one of her Majesty's justices of the peace in and for the said county of           , bearing date the            day of            instant, by which he, the said constable, was commanded to sell such and so much of the goods and chattels of A. O., late of           , in the said county, yeoman, as should satisfy and pay T. K., constable of the aforesaid parish of           , the sum of           , being the charges of conveying the said A. O. to the house of correction [or as the case may be] of the said county, at           , in the said county, to which house of correction [or as the case may be] he the said A. O. was committed for a misdemeanor [or "felony," as the case

(a) If the landlord himself distrain the forms may be readily altered.

may be]; by a warrant under the hand and seal of the said E. E. ; that under the said warrant first before mentioned he the said informant yesterday morning, being the day of instant, took a distress on a quantity of potatoes [or as the case may be], belonging to the said A. O., in a house in the village of , in the parish of , in the county aforesaid, and put a lock on the door ; but that last evening the said lock so placed on the said distress was wilfully broken by B. O. [or, "the said A. O." as the case may be], of , in the said county, [labourer], and that the said potatoes, so taken as a distress, were rescued by the said B. O. [or "A. O." as the case may be], in breach of the peace, and to the delaying of justice. He therefore prays that hue and cry may be levied against the said B. O. [or "A. O." as the case may be], for the said rescous and pound breach, as against those who break the peace.

Before me,

J. P.

A. I.

## 6. Forms.

IN the matter of the complaint of A. B. against C. D. for a breach of the provisions of an act of the fifty-seventh year of his late Majesty King George the Third, intituled An Act [here insert the title of this act, ante, p. 1161], I, E. F., a justice of the peace for the county of , and acting within the division of , do order and adjudge that the said C. D. shall pay to A. B. the sum of , as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a distress for rent; and the further sum of for costs on this complaint.

(Signed)

E. F.

(17.) Order and judgment of the justice before whom complaint is preferred on 57 Geo. 3, c. 93, for taking too much costs, where the order and judgment is for the complainant.

IN the matter of the complaint of A. B. against C. D. for the breach of the provisions of an act of the fifty-seventh year of his late Majesty King George the Third, intituled An Act [here insert the title of this act, ante, p. 1161], I, E. F., a justice of the peace for the county of , and acting within the division of , do order and adjudge that the complaint of the said A. B. is unfounded, [if costs are given, "and I do further order and adjudge, that the said A. B. shall pay unto the said C. D. the sum of for costs."]

(Signed)

E. F.

(18.) Order and judgment of the justice on like statute, where he dismisses the complaint as unfounded, and with or without costs.

## Warrant (Search).

IF goods, feloniously stolen, be on the premises of the felon or of an accessory to the felony, or be brought or deposited there by the felon with a knowledge, by the owner of the premises, of the felony, it would seem that an entry on them for the purpose of searching for and retaking the goods, might be made by any party without warrant, provided the outer door be open. In general, however, it is safest and best to obtain a magistrate's warrant for the search; and clearly the party making such entry would not be justified in doing so without such warrant, if it turned out that the goods were not on the premises, nor could outer doors be broken open unless under such a warrant. As to the right of entry on the premises of another, for the purpose of recapturing goods wrongfully detained, see "*Forcible Entry*."

Search without warrant.

In the case of a complaint, and oath made of goods stolen, and that the party suspects that goods are in such house, and shows the cause of his suspicion, the justice of the peace may grant a warrant to search in those suspected places mentioned in his warrant, and to attach the goods, and the party in whose custody they are found, and bring them before him, or some other justice of peace, to give an account how he came by them, and farther to abide such order as to law shall

Search-warrants, in what cases granted.



- appertain. (Vide *Dalt. c. 169, p. 403*; 2 *Hale*, 113, 150; 2 *Wils* 291.) However, a *positive* oath that a felony is *actually committed*, is not necessary to justify a magistrate in granting this warrant. (*Else v. Smith*, 1 *D. & R.* 97, *in error*, 2 *Chit.* 304.) *Et per Abbott, C. J.* :—"There are many cases in which a cautious man might not choose to swear that his property is stolen, and, nevertheless, he might have great reason to suspect a particular party, and the magistrate would be well warranted in granting his search-warrant. Suppose the case of a horse, which has been lost by its owner, and it is found in the possession of another person; the owner, in that case, might not like to take upon himself to swear that the horse has been stolen, for it might have strayed; but when he finds his horse concealed in the stable of another person, he may very naturally conclude it must have been stolen, from the circumstance of the concealment; and, therefore, he may very conscientiously swear he suspects it to have been stolen. If, under such circumstances, the magistrate is not authorised in issuing his search-warrant, it might happen, in many cases, that felonies would go undetected."
- On oath.**
- Bare surmise.** It is clear, that upon a *bare surmise*, a justice cannot make a warrant to break any man's house, to search for a felon, or for stolen goods; for the justices, being created by act of parliament, have no such authority granted to them by any act of parliament; and it would be full of inconvenience that it should be in the power of any justice of the peace, being a judge of record, upon a bare suggestion, to break the house of any person, of what state, quality, or degree soever, either in the day or night, upon such surmises. (4 *Inst.* 177.)
- In larceny, and other offences of that kind.** Independently of this general power which a justice has by virtue of his commission to grant a search-warrant, statutes have given express jurisdiction in particular cases.
- In other cases.** There are other statutes relative to naval and military stores, and to the taking of idle and disorderly persons, in order to recruit the land forces and marines, containing powers to issue search-warrants; and under the Vagrant Act, a justice may order the trunks, bundles, &c., of vagrants to be inspected, (5 *Geo.* 4, c. 83, s. 8); and he may grant his warrant to search lodging-houses, &c. suspected to conceal vagrants, (*ib.*, s. 13). (See "*Stores*," "*Vagrants*.")
- Warrants to search for property belonging to bankrupts in houses not belonging to the bankrupt (which were formerly granted by justices) are now granted by the court of bankruptcy under the "Bankrupt Law Consolidation Act, 1849, 12 & 13 *Vict.* c. 106, s. 106.
- Any search-warrants may be granted or issued "on Sunday as well as on any other day," 11 & 12 *Vict.* c. 42, s. 4.
- Form of warrant.** The warrant ought to be directed to a constable, or other public officer, and not to any private person; though it is fit the party complaining should be present and assistant, because he knows his goods. (2 *Hale*, 150.)
- Pawnbrokers.** As to searching pawnbrokers' houses, &c., see 39 & 40 *Geo.* 3, c. 99, s. 13, *ante*, title "*Pawnbrokers*."
- By 23 & 24 *Vict.* c. 139, s. 25, it shall be lawful for any justice of the peace within the limits of whose jurisdiction gunpowder is suspected to be made, kept, or carried contrary to this act, on demand made and reasonable cause assigned upon oath by any person, to issue a warrant under his hand and seal for searching in the day time any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other place, or any carriage, ship, boat, or vessel in which such gunpowder is suspected to be made, kept, or carried contrary to this act; and all gunpowder found to be made, kept, or carried contrary to this act, and also the gunpowder barrels or other receptacles, shall be immediately seized by the searcher, &c.
- 23 & 24 *Vict.* c. 139.**
- Justices to issue search-warrants for gunpowder.** —

24 & 25 Vict. c. 100, s. 65, enacts that any justice of the peace of any county or place in which any gunpowder, or other explosive, dangerous, or noxious substance or thing, or any such machine, engine, instrument, or thing, is suspected to be made, kept, or carried on for the purpose of being used in committing any of the felonies in this act mentioned, upon reasonable cause assigned upon oath by any person, may issue a warrant under his hand and seal, for searching, in the daytime, any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other place, or any carriage, waggon, cart, ship, boat, or vessel, in which the same is suspected to be made, kept, or carried for such purpose as hereinbefore mentioned, and every person acting in the execution of any such warrant shall have for seizing, removing to proper places, and detaining, all such gunpowder, explosive, dangerous, or noxious substances, machines, engines, instruments, or things, found upon such search, which he shall have good cause to suspect to be intended to be used in committing any such offence, and the barrels, packages, cases, and other receptacles in which the same shall be, the same powers and protections which are given to persons searching for unlawful quantities of gunpowder, under the warrant of a justice, by the act of the 23 & 24 years of the reign of her present Majesty, chap. 139, intituled "An Act to amend the Law concerning the making, keeping, and carriage of Gunpowder, and compositions of an explosive nature, and concerning the manufacture, sale, and use of Fireworks." This section is in substance again enacted by sect. 55 of the 24 & 25 Vict. c. 97 (Malicious Injuries to Property Act), and applied to felonies under that act.

24 & 25 Vict. c. 100.

Search-warrant by justices to search houses where explosive substances suspected to be for felonious purposes.

Sect. 103, 24 & 25 Vict. c. 96, enacts that if any credible witness shall prove upon oath, before a justice of the peace, a reasonable cause to suspect that any person has in his possession, or on his premises, any property whatsoever, on or with respect to which any offence punishable either upon indictment or upon summary conviction by virtue of that act (Larceny Act) shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods.

24 & 25 Vict. c. 96.

Search-warrant for goods suspected to be stolen.

Sect. 46 of 24 & 25 Vict. c. 98 (Forgery Act). If it shall be made to appear by information, on oath or affirmation, before a justice of the peace, that there is reasonable cause to believe that any person has in his custody or possession, without lawful authority or excuse, any note or bill of the governor and company of the Bank of England or Ireland, or of any body corporate, company, or person carrying on the business of bankers, or any frame, mould, or implement for making paper in imitation of the paper used for such notes or bills, or any such paper, or any plate, wood, stone, or other material having thereon any words, forms, devices, or characters capable of producing or intended to produce, the impression of any such note or bill, or any part thereof, or any tool, implement, or material used or employed, or intended to be used or employed, in or about any of the operations aforesaid, or any forged security, document, or instrument whatsoever, or any machinery, frame, mould, plate, die, seal, paper, or other matter or thing used or employed, or intended to be used or employed, in the forgery of any security, document, or instrument whatsoever, such justice may, if he think fit, grant a warrant to search for the same; and if the same shall be found upon such search, it shall be lawful to seize and carry the same before some justice of the county or place, to be by him disposed of according to law.

24 & 25 Vict. c. 98.

Search-warrant for paper or implements employed in any forgery, and for forged instruments.

Sect. 27 of 24 & 25 Vict. c. 99 (Offences against Coin). Where it shall be proved on the oath of a credible witness before any justice of the peace, that there is reasonable cause to suspect that any person has been concerned in counterfeiting the queen's current gold, silver, or copper coin, or any such foreign or other coin as in this act

Coinage.

24 & 25 Vict. c. 99.

Search-warrant for discovery and seizure of counterfeit coin and coinage tools, &c.

## Warrant (Search).

before mentioned, or has in his custody or possession any such false or counterfeit coin, or any instrument, tool, or engine whatsoever, adapted and intended for the making or counterfeiting of any such coin, or any other machine used, or intended to be used, for making or counterfeiting any such coin, or any such filings, clippings, or bullion, or any such gold or silver in dust solution, or otherwise as aforesaid, it shall be lawful for any justice of the peace, by warrant under his hand, to cause any place whatsoever belonging to or in the occupation or under the control of such suspected person, to be searched, either in the day or in the night, and if any such false or counterfeit coin, or any such instrument, tool, or engine, or any such machine, or any such filings, clippings, or bullion, or any such gold or silver in dust, solution, or otherwise as aforesaid, shall be found in any place so searched, to cause the same to be seized and carried forthwith before some justice of the peace.

The form of warrant may be as under :—

To the constable of .

Form of search-  
warrant.

{ Whereas it appears to me the undersigned, one of her Majesty's justices  
To wit { of the peace in and for the said [county of] , by the information  
on [oath, or as the case may be] of C. D., of , in the said county, a credible witness, that [here state the subject-matter of the information]. These are therefore in the name of our said lady the Queen to authorize and require you, with necessary and proper assistants, to enter in the day time into the said [the place where] of the said E. F., at , in the county aforesaid [as described by the information], and there diligently to search for the said goods [as described in information], and if the same, or any part thereof, shall be found upon such search, that you bring the same before me, or some other of her Majesty's justices of the peace in and for the said county, to be dealt with according to law.

Given under my hand and seal, at , in the said county, this day  
of , A.D. 186 .

J. S. (L. S.)

As to general warrants to search for defective weights and measures, see "*Weights and Measures*;" (*Hutchinson v. Reeves*, 9 M. & W. 757.)

The warrant may also command the party in whose custody the goods are, to be brought before the justices of the peace, there, upon examination, to be disposed of as the law directs. (2 *Hale*, 150.)

Lord *Hale* says, "It is fit that these warrants to search do express that search be made in the *day time*; and though I will not say that they are unlawful without such restriction, yet they are very inconvenient without it; for many times, under pretence of searches made in the night, robberies and burglaries have been committed; and at best it creates great disturbances." (2 *Hale*, 150.) But, in cases not of probable suspicion only, but of positive proof thereof, it is right to execute the warrant in the night-time, lest the offenders and goods also be gone before morning. (*Barl. Search-War.*)

As to the date, see "*Commitment for safe Custody.*"

General warrants  
condemned.

Formerly it was usual for justices to grant general warrants, to search all suspected places for stolen goods; and there is a precedent in *Dalton*, requiring the constable to search *all such suspected places as he and the party complaining shall think convenient*; yet such practice is generally condemned by the best authorities. Thus, Lord *Hale*, in his *Summary of Pleas of the Crown*, says, a general warrant to search all places for felonies or stolen goods, is not good. (*Hale's Sum.* 93.) Mr. *Hawkins* says: "I do not find any good authority, that a justice can justify sending a general warrant, to search all suspected houses in general for stolen goods: because such warrant seems to be illegal on the very face of it; for it would be extremely hard to leave it to

the discretion of a common officer to arrest what persons, and search what houses he thinks fit; and if a justice cannot legally grant a blank warrant for the arrest of a single person, leaving it to the party to fill up, surely he cannot grant such a general warrant, which might have the effect of a hundred blank warrants. (2 *Haw. c. 13, s. 10, 17.*) Again, Lord *Hale*, in his *History of the Pleas of the Crown*, 2 *Hale*, 150, expresseth himself thus: "I do take it, that a general warrant to search in all suspected places is not good, but only to search in such particular places where the party assigns before the justice his suspicion, and the probable causes thereof; for these warrants are judicial acts, and must be granted upon examination of the fact. And therefore I take those general warrants dormant, which are many times made before any felony committed, are not justifiable, for it makes the party to be in effect the judge; and therefore searches made by pretence of such general warrants give no more power to the officer or party than what they may do by law without them."

Whether the stolen goods are in a suspected house or not, the officer and his assistants in the day-time may enter, the doors being open, to make search, and it is justifiable by the warrant, and the doors may be broken open on demand and refusal, if the goods are there, and if they are not there the constable seems indemnified, but he that made the suggestion is punishable. (2 *Hale*, 151.) The owner of the goods, or some person who can point them out, usually accompanies the officer.

Execution of warrant.

For though the goods be not in the house, the officer is excused that breaks open the door to search, because he searched by warrant, and could not know whether the goods were there till search made: but the party that made the suggestion is as it is said punishable in such case; for, as to him, the breaking of the door is, *in eventum*, lawful or unlawful—to wit, lawful, if the goods are there; unlawful, if not there. (2 *Hale*, 151.) It is apprehended, however, that the party could not be thus punishable (*i.e.* by action), unless he acted maliciously and without probable cause.

The warrant must of course be executed within the jurisdiction of the justice.

By 5 & 6 Vict. c. 109, s. 15, constables appointed under that act "have within the whole county, and also within all liberties and franchises and detached parts of other counties situated therein, and also in every county adjoining to the county in which they are appointed, all the powers, privileges, and immunities, and shall be liable to all the duties and responsibilities of a constable within his constablewick, but shall not be bound to act as a constable beyond the parish for which they are severally appointed and sworn, without the special warrant of a justice of the peace. But for this act it would seem that where a search-warrant is directed to all constables, &c., generally, in their character of constables, and not to a constable by name, it could not be lawfully executed by a constable out of the precincts of the parish, &c., for which he is constable, &c., notwithstanding that the place required to be searched is within the jurisdiction of the justice signing the warrant, as 5 Geo. 4, c. 18, s. 6, (which enabled him to do so) was repealed by 11 & 12 Vict. c. 43, s. 36, and s. 3 of that act, as well as 11 & 12 Vict. c. 42, s. 10 only apply to warrants to apprehend. Where 11 & 12 Vict. c. 42, was intended to apply to search-warrants, they are mentioned, as in s. 4. (See and consider *R. v. Weir*, 1 B. & C. 288; 5 Geo. 4, c. 18, s. 6; *Gludwell v. Blake*, 1 Cr. M. & R. 636; *Leverick v. Mercer*, 14 Q. B. 768; and 11 & 12 Vict. cc. 42 and 43.)

Power of constables.

The officer must strictly observe the directions of the warrant, and if he be directed to seize only stolen sugar, and seize tea, he will be a trespasser. (*Price v. Messenger*, 2 B. & P. 158; *Bell v. Oakley*, 2 M. & Sel. 259.)

## Warrant (Search).

A warrant under the Vagrant Act, to search all suspected houses, for idle and disorderly persons, is strictly confined to persons of that description, and the officer will not be justified if he attempt to execute it in any other places than those intended by the statute. (1 *Leach*, 208.)

A warrant directing a search in a particular house only, would not justify a search in another.

Where a constable, having a warrant to search for specific articles alleged to have been stolen, found and took away those, and certain others supposed to have been also stolen, but which were not mentioned in the warrant, and *not likely to be of use in substantiating the charge of stealing the goods that were specified*, it was held that the constable was a trespasser. (*Crozier v. Cundey*, 9 D. & R. 224; 6 B. & C. 232.)

But a constable seizing articles not mentioned in the warrant under which he acts, is not necessarily a trespasser. *Per Lord Tenterden, Ibid.*

Where officers went with a search-warrant, and, at the desire of the party, gave it to him for his perusal, and he would not return it, it was held that they had a right to take it from him, and even to coerce his person to obtain the possession of it, provided they used no more violence than was necessary. (*R. v. Mitton*, 3 C. & P. 31.)

Return of the  
warrant.

On the return of the warrant executed, the justice hath these things to do.

As touching the *goods* brought before him, if it appear they were not stolen they are to be restored to the possessor; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hands of the sheriff or constable, to the end the party robbed may proceed, by indicting and convicting the offender, to have restitution (2 *Hale*, 151); and as to destroying articles found for effecting forgery, see sect. 46 of 24 & 25 Vict. c. 98.

As touching the *party* that had the custody of the goods, if they were not stolen, then he is to be discharged; if stolen, but not by him but by another, that sold or delivered them to him, if it appear that he was ignorant that they were stolen, he may be discharged as an offender, and bound over to give evidence as a witness against him that sold them; if it appear he was knowing they were stolen, he must be committed or bound over to answer the felony. (2 *Hale*, 152.)

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## Waterworks.

PROVISIONS AS TO WATERWORKS, CONSOLIDATED.

[10 Vict. c. 17; 26 & 27 Vict. c. 93.]

The duties to be performed by justices with respect to this subject are under the following heads:—

10 Vict. c. 17.

Sect.

7. As to certifying errors and omissions in plans.
13. As to penalties for obstructing the setting out the line of works.
14. Penalties for illegally diverting water.
- 16 & 17. Settling differences respecting accommodation works.
- 28—34. As to laying pipes and breaking up streets for that purpose.
- 35—37. Penalties respecting the supply of water.

Sect.

- 38—43. Penalties as to regulating fire plugs.
- 44—47. As to pipes laid by the undertakers.
- 48—53. As to pipes laid by inhabitants.
- 54—60. As to waste of water, penalties.
- 61—67. Penalties for fouling water.
- 68—74. As to recovery of water rates.
- 85—89. As to mode of recovering damages and penalties.
- 90—91. Penalty for not keeping special act accessible.

26 & 27 Vict. c. 93.

- 3—10. Powers for the security of reservoirs.
- 12—15. Supply of water to particular purposes.
- 16—20. As to waste and misuse of water.

THE 10th Vict. c. 17, "The Waterworks Clauses Act, 1847," being "An Act for consolidating in One Act certain Provisions usually contained in Acts authorising the making of Waterworks for supplying Towns with Water," extends only to such waterworks as shall be authorised by any act of parliament hereafter to be passed which shall declare that this act shall be incorporated therewith, and all the clauses of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other act which shall be incorporated therewith, form part of such act, and be construed therewith as forming one act.

And with respect to the construction of this act and any act incorporated therewith, it is enacted that

Sect. 2. The expression "the special act" used in this act shall be construed to mean any act which shall be hereafter passed authorising the construction of waterworks, and with which this act shall be incorporated; and the word "prescribed" used in this act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act," had been used; and the expression "the lands and streams" shall mean the lands and streams of water which shall by the special act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the waterworks, and the works connected therewith, by the special act authorised to be constructed; and the expression "the undertakers" shall mean the persons by the special act authorised to construct the waterworks.

Sect. 3. The following words and expressions, in both this and the special act, and any act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say.)

Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number:

Words importing the masculine gender shall include females:  
The word "person" shall include a corporation, whether aggregate or sole:

The word "lands" shall include messuages, lands, tenements, and hereditaments, or heritages of any tenure:

The word "streams" shall include springs, brooks, rivers, and other running waters:

10 Vict. c. 17.

"Street :"

"the water-works :"

"Water rate :"

"Month :"

"Superior courts :"

"Oath :"

"County :"

"Justice :"

"Two justices :"

"Sheri :"

"Quarter sessions :"

"the town commissioners :"

"Inspector."

The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place within the limits of the special act :

The expression "the waterworks" shall mean the waterworks, and the works connected therewith, by the special act authorised to be constructed :

The expression "water rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of water :

The word "month" shall mean calendar month :

The expression "superior courts," where the matter submitted to the cognisance of the court arises in England or Ireland, shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require, and shall include the court of Common Pleas of the county palatine of Lancaster and the Court of Pleas of the county of Durham, and where such matter arises in Scotland it shall mean the court of session :

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :

The word "county" shall include riding or other division of a county having a separate commission of the peace, and in Scotland stewardry, and any ward or other division of a county or stewardry having a separate sheriff, and it shall also include county of a city or county of a town :

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognisance of any such justice arises ; and if such matter arise in respect of lands or streams situated not wholly in one jurisdiction, shall mean a justice acting for the county or place where any part of such lands or streams shall be situated ; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together :

The word "sheriff" shall mean the sheriff depute of the county or ward of a county in Scotland and the steward depute of the stewardry in Scotland in which the matter submitted to the cognisance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively :

The expression "quarter sessions" shall mean quarter sessions as defined in the special act, and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the waterworks, or the principal office thereof, for the county or place in which the waterworks, or the principal office thereof, is situate, or for some division of such county having a separate commission of the peace :

The expression "the town commissioners" shall mean the parties defined under that title in the special act, and where no such parties shall be there defined shall mean the commissioners, trustees, or other parties having the control or management of the streets under any act for paving or improving the town or district to be supplied with water under the special act :

The word "inspector" shall mean an officer appointed under any local act relating to the town or district supplied with water under the special act, for the purpose of inspecting or superintending works connected with the paving, drainage, or supply of water of such town or district, or an officer appointed under any general act for executing the like duties with respect to such town or district together with other towns or districts.

V. For the purpose of incorporating part only of this act with any act hereafter to be passed, it shall be enough to describe the clauses of this act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this act with the exception of the clauses so described, shall be incorporated with such act, and thereupon all the clauses of this act so incorporated shall, save so far as they are expressly varied or excepted by such act, form part of such act, and such act shall be construed as if such clauses were set forth therein with reference to the matter to which such act relates.

10 Vict. c. 17.

Form in which portions of this act may be incorporated in other acts.

## *Construction of Waterworks.*

And with respect to the construction of the waterworks, be it enacted as follows:

Sect. 6 provides that the construction of waterworks is to be subject to the provisions of this act and the "Lands Clauses Consolidation Acts, 1845."

Sect. 7. If any omission, mis-statement, or wrong description shall have been made of any lands or streams, or of the owners, lessees, or occupiers of any lands or streams, described on the plans or books of reference deposited in compliance with the standing orders of either house of parliament, or in the schedule to the special act, the undertakers, after giving ten days' notice to the owners, lessees, and occupiers of the lands and streams affected by such proposed correction, may apply, in England or Ireland, to two justices, and in Scotland to the sheriff, for the correction thereof; and if it appear to such justices or sheriff that such omission, mis-statement, or wrong description arose from mistake, they or he shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate, with the other documents to which it relates, shall be deposited in England or Ireland, with the clerk of the peace, and in Scotland with the sheriff clerk of the several counties in which the lands or streams affected thereby are situated, or, where any such lands or streams are situated in a royal burgh in Scotland, with the town clerk of such burgh; and such certificate shall be kept by such clerks of the peace, sheriff clerks, or town clerks respectively with the other documents to which they relate; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and the undertakers may make the works in accordance with such certificate, as if such omission, mis-statement, or wrong description had not been made.

Errors and omissions in plans, &c., may be corrected by justices, &c., who shall certify the same.

Certificate, &c., to be deposited.

Sect. 8. The undertakers shall not begin to execute the waterworks unless they shall have previously deposited with the clerk of the peace in England or Ireland, and the sheriff clerk in Scotland, of every county, and the town clerk of every royal burgh in Scotland, in which the waterworks shall be situated, a plan and section of all such alterations from the original plan and section (if any) as shall have been approved of by parliament, on the same scale and containing the same particulars as the original plan and section of the waterworks, and shall also, have deposited with the parish clerks of the several parishes in England, and the clerks of the unions of the several parishes in Ireland, and the schoolmasters of the several parishes in Scotland, in which such alterations shall have been authorised to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

Works not to be proceeded with until plans of all alterations authorised by parliament have been deposited.

Sect. 9. The said clerks of the peace, sheriff clerks, and town clerks, parish clerks, clerks of unions, and schoolmasters, shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall keep the same, as well as the said original plans and sections, and shall allow all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from

Clerks of the peace, &c., to receive plans of alterations, &c., and allow inspection.



10 Vict. c. 17. the same, in the like manner and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by 7 Will. 4 & 1 Vict. c. 83, "An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

Copies of plans and alterations, &c., to be evidence.

Sect. 10. Copies of the said plans and books of reference, or of any alteration or correction thereof or extracts therefrom, certified by any such clerk of the peace, sheriff clerk, or town clerk, which certificate such clerk shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Not to deviate beyond limits defined upon plans, &c.

Sect. 11. The undertakers in constructing the waterworks shall not deviate from the line of the works laid down in the said plan more than the prescribed number of yards, and where no number of yards is prescribed not more than ten yards, nor in any case to any greater extent than the line of lateral deviation described in the said plans with respect to such works, nor take nor use, for the purpose of such deviation, the lands of any person not mentioned in the books of reference, without his previous consent in writing, unless the name of such person shall have been omitted by mistake, and the fact that such omission happened from mistake shall have been certified in manner hereinbefore provided.

By sect. 12 the undertakers, subject to provisions of this and the special act, may execute the works herein named, and are to make compensation for damages.

Penalty for obstructing construction of works.

Sect. 13. Every person who shall wilfully obstruct any person acting under the authority of the undertakers in setting out the line of the works, or pull up or remove any poles or stakes driven into the ground for the purpose of setting out the line of such works, or deface or destroy any works made for the same purpose, shall be liable to a penalty not exceeding 5*l.* for every such offence.

Penalty for illegally diverting water.

Sect. 14. After the streams or supplies of water hereby or by the special act authorised to be taken by the undertakers shall have been so taken, every person who shall illegally divert or take the waters supplying or flowing into the streams so taken, or any part thereof, or who shall do any unlawful act whereby the said streams or supplies of water may be drawn off or diminished in quantity, and who shall not immediately repair the injury done by him, on being required so to do by the undertakers, so as to restore the said waters to the state in which they were before such act, shall forfeit to the undertakers any sum which shall be awarded, in England or Ireland, by two justices, and in Scotland by the sheriff, not exceeding 5*l.* for every day during which the said supply of water shall be diverted or diminished by reason of any act done by or by the authority of such person, and any sum so forfeited shall be in addition to the sum which he may be lawfully adjudged liable to pay to the undertakers for any damage which they may sustain by reason of their supply of water being diminished; and the payment of the sum so forfeited shall not bar or affect the right of the undertakers to bring or raise an action at law against such person for the damage so committed.

Reservation of existing rights.

Sect. 15. Provided always, That nothing herein contained shall prevent the owners and occupiers for the time being of lands through or by which such streams shall flow from using the waters thereof in such manner and to such extent as they might have done before the passing of the special act, unless they shall have received compensation in respect of their right of so using such water.

#### *Accommodation Works.*

And with respect to the construction of works for the accommodation of lands adjoining the waterworks, be it enacted as follows:

Sect. 16. Where by the special act the undertakers shall be required to erect any works for making good the interruption caused to any lands adjoining or near the waterworks, or otherwise, for the accommodation of such lands; then if any difference shall arise respecting the construction of any such accommodation works, or the kind or size or sufficiency thereof, or respecting the maintenance thereof, the same shall be determined in England or Ireland by two justices, and in Scotland by the sheriff, and such justices or sheriff shall also appoint the time within which such accommodation works shall be begun and finished by the undertakers.

10 Vict. c. 17.

Differences as to the construction of accommodation works to be settled by justices.

Sect. 17. If the undertakers shall for fourteen days next after the time appointed by such justices or sheriff for the beginning of any such accommodation works fail to begin such works, or, having begun such works, fail diligently to execute the same in a sufficient manner, the person aggrieved by such failure may execute such works or repairs; and the reasonable expenses thereof shall, on demand, be repaid by the undertakers to the person by whom the same shall so have been executed; and if there be any dispute about the amount or nature of such expenses, the same shall be settled in England or Ireland by two justices, and in Scotland by the sheriff.

If undertakers fail to execute such works, persons aggrieved may perform the same and charge the expense to the undertakers.

### Mines.

And with respect to mines, be it enacted as follows :

By sect. 18 the undertakers shall not be entitled to any mines, &c.

Sect. 19. The undertakers shall from time to time, within six months from the time at which any pipes, conduits, or underground works shall have been laid down or formed by them, cause a survey and map to be made of the district, within which any such pipes or underground works shall be laid, on a scale not less than one foot to a mile, and shall cause to be marked thereon the course and situation of all existing pipes or conduits for the collection, passage, or distribution of water and underground works belonging to them, in order to show all such underground works within the said district, and shall, within six months from the making of any alterations or additions, cause the said map to be from time to time corrected, and such additions made thereto as may show the line and situation of all such pipes, conduits, and underground works as may be laid down or formed by them from time to time after the passing of the special act, and such map and plan, or a copy thereof, with the date expressed thereon of the last time when the same shall have been so corrected as aforesaid, shall be kept in the office of the undertakers, and shall be open to the inspection of all persons interested in the same within the said district.

Map and plan of underground works of undertakers to be made.

Sect. 20. The undertakers shall from time to time, within three months from the time at which any such map or plan, or any such correction thereof or addition thereto, shall have been made as aforesaid, deposit with the clerks of the peace in England or Ireland, and with the sheriff clerks in Scotland, of every county, and the town clerk of every burgh in Scotland, in which such district or any part thereof may be situate, and also with the parish clerks of the several parishes in England, and clerks of the union of the several parishes in Ireland, and the schoolmaster of the several parishes in Scotland, in which such underground works shall be situate, copies of the said map or plan, with all such particulars, and all such corrections and additions as aforesaid, so far as relates to such counties burghs, and parishes respectively.

Copies of such map or plan to be deposited with clerk of the peace, &c.

Sect. 21. The said clerks of the peace, sheriff clerks, and town clerks, parish clerks, clerks of the union, and schoolmasters shall receive the said copies of the said map and plan respectively, and shall keep the same, and shall allow all persons interested to inspect the same, and take copies or extracts of and from the same, in the like manner, and

Clerks of the peace, &c. to receive and keep copies of the map, &c., and allow inspection.

10 Vict. c. 17. upon the like terms, and under the like penalty for default, as is provided in the case of maps and plans deposited under 7 Will. 4 & 1 Vict. c. 83, "An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

Sects. 22 to 27 provide for the working mines that may interfere with the works of the undertakers.

### *Laying of Pipes.*

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows:

Power to break up streets, &c., under superintendence, and to open drains.

Sect. 28. The undertakers, under such superintendence as is herein-after specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special act, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works and engines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be in the execution of the powers hereby or by the special act granted, and making compensation for any damage which may be done in the execution of such powers.

Not to enter on private land without consent.

Sect. 29. Provided always, that nothing herein contained shall authorise or empower the undertakers to lay down or place any pipe, conduit, service pipe, or other work in any land not dedicated to public use without the consent of the owners and occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special act, or any other act of parliament, and may repair or alter any pipe so laid down.

Notice to be served on persons having control, &c., before breaking up streets or opening drains.

Sect. 30. Before the undertakers open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

Streets or drains not to be broken up except under superintendence of persons having control of the same.

Sect. 31. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the intention of the undertakers as aforesaid, or

If persons having the control, &c., fail to superintend, undertakers may perform the work without them.

shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation; the undertakers may perform the work specified in such notice without the superintendence of such persons, or their officer. 10 Vict. c. 17.

Sect. 32. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and kept thereagainst, every night during which such road or pavement shall be continued open or broken up, and shall, after replacing and making good the road or pavement which shall have been so broken up, keep the same in good repair for three months thereafter, and such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside. Streets, &c., broken up to be reinstated without delay.

Sect. 33. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the undertakers are authorised to perform such works without any superintendence or notice, or if the undertakers make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of six months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made a sum not exceeding 5*l.* for every such offence, and an additional sum of 5*l.* for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof. Penalty for delay in reinstating streets, &c.

Sect. 34. If any such delay or omission as aforesaid shall take place the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers, and such expenses may be recovered in the same way as damages are recoverable under this and the special act. (See, *post*, sect. 85.) In case of delay, other parties may reinstate and recover the expenses.

### *Supply of Water.*

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows:

Sect. 35. The undertakers shall provide and keep in the pipes to be laid down by them a supply of pure and wholesome water, sufficient for the domestic use of all the inhabitants of the town or district within the limits of the special act, who, as hereinafter provided, shall be entitled to demand a supply, and shall be willing to pay water rate for the same; and such supply shall be constantly laid on at such a pressure as will make the water reach the top story of the highest houses within the said limits, unless it be provided by the special act that the water to be supplied by the undertakers need not be con- A constant supply of water to be kept for domestic purposes at high pressure.

10 Vict. c. 17. stantly laid on under pressure: and the undertakers shall cause pipes to be laid down and water to be brought to every part of the town or district within the limits of the special act whereunto they shall be required by so many owners or occupiers of houses in that part of the town or district, as that the aggregate amount of water rate payable by them annually at the rates specified in the special act shall not be less than one tenth part of the expense of providing and laying down such pipes: provided that no such requisition shall be binding on the undertakers unless such owners or occupiers shall severally execute an agreement binding themselves to take such supply of water for three successive years at least.

Penalty for neglect to lay pipes for supply of water for domestic use.

Proviso.

Supply of water to be kept for cleansing sewers, drains, &c., and for other public purposes.

Sect. 36. If for twenty-eight days after demand in writing made to the undertakers, and tender made of an agreement, signed by such number of owners or occupiers as aforesaid,\* to take and pay for a supply of water for three years or more, the undertakers shall refuse or neglect to lay down pipes in the manner hereinbefore directed, and to provide such supply of water as aforesaid or as provided by the special act, they shall forfeit to each of such owners and occupiers the amount of rate which he would be liable to pay under such agreement, and also the further sum of 40s. for every day during which they shall refuse or neglect to lay down such pipes, or to provide such supply of water: Provided always, that the undertakers shall not be liable to any penalty for not supplying water if the want of such supply shall arise from frost, unusual drought, or other unavoidable cause or accident.

Sect. 37. In all the pipes to which any fire-plug shall be fixed the undertakers shall provide and keep constantly laid on, unless prevented by frost, unusual drought, or other unavoidable accident, or during necessary repairs, a sufficient supply of water for the following purposes; (that is to say,) for cleansing the sewers and drains, for cleansing and watering the streets, and for supplying any public pumps, baths, or washhouses that may be established for the free use of the inhabitants, or paid for out of any poor rates or borough rates levied within the limits of the special act; and such supply shall be provided at such rates, in such quantities, and upon such terms and conditions as may be agreed upon by the town commissioners and the undertakers, or, in case of disagreement, as shall be settled in England or Ireland by two justices, and in Scotland by the sheriff, until in either case an inspector shall have been appointed, and after the appointment of such inspector, by the inspector so appointed.

### *Fire Plugs.*

Undertakers to affix public fire-plugs in mains.

Sect. 38. The undertakers, at the request of the town commissioners, shall fix proper fire-plugs in the main and other pipes belonging to them, at such convenient distances, not being more than the prescribed distance, or, if no distance be prescribed, not more than one hundred yards from each other, and at such places as may be most proper and convenient for the supply of water for extinguishing any fire which may break out within the limits of the special act; and in case of any difference of opinion as to the proper position or number of such fire-plugs, it shall be settled by such inspector as aforesaid, when appointed, and in the meantime by two justices in England or Ireland, and by the sheriff in Scotland.

Undertakers to repair fire-plugs and deposit keys thereof at engine houses, &c.

Sect. 39. The undertakers shall from time to time renew and keep in effective order every such fire-plug; and as soon as any such fire-plug is completed they shall deposit a key thereof at each place within the limits of the special act where any public fire engine is kept, and in such other places as may be appointed by the town commissioners, and shall put up a public notice in some conspicuous place in each street in which such fire-plug is situated showing its situation,

which notice the undertakers may put up on any house or building in such street. 10 Vict. c. 17.

Sect. 40. The cost of such fire-plugs, and the expense of fixing, placing, and maintaining the same in repair, and of providing such keys as aforesaid, shall be defrayed by the town commissioners. Expense of fire-plugs, &c., how to be borne.

Sect. 41. The undertakers shall, at the request and expense of the owner or occupier of any work or manufactory situated in any street in which there shall be a pipe of the undertakers, place and maintain in effective order a fire-plug (to be used only for extinguishing fires) as near as conveniently may be to such work or manufactory. Fire-plugs to be placed near manufactories at request, &c., of owners.

Sect. 42. The undertakers shall at all times keep charged with water, under such pressure as aforesaid, all their pipes to which fire-plugs shall be fixed, unless prevented by frost, unusual drought, or other unavoidable cause or accident, or during necessary repairs, and shall allow all persons at all times to take and use such water for extinguishing fire, without making compensation for the same. Pipes to be kept charged, and water taken to extinguish fires without charge.

Sect. 43. If, except when prevented as aforesaid, the undertakers neglect or refuse to fix, maintain, or repair such fire-plugs, or to furnish to the town commissioners a sufficient supply of water for the public purposes aforesaid, upon such terms as shall have been agreed on or settled as aforesaid, or if, except as aforesaid, they neglect to keep their pipes charged under such pressure as aforesaid, or neglect or refuse to furnish to any owner or occupier entitled under this or the special act to receive a supply of water during any part of the time for which the rates for such supply have been paid or tendered, they shall be liable to a penalty of 10*l.*, and shall also forfeit to the town commissioners, and to every person having paid or tendered the rate, the sum of 40*s.* for every day during which such refusal or neglect shall continue after notice in writing shall have been given to the undertakers of the want of supply. Penalty for refusal to fix, &c., fire-plugs, or occasional failure of supply of water.

## *Pipes to be laid by the Undertakers.*

And with respect to the communication pipes to be laid by the undertakers, be it enacted as follows:

Sect. 44. The undertakers shall, upon the request of the owner of any dwelling house in any street in which pipes shall have been laid down by them, the annual value of which house shall not exceed ten pounds, or upon request of the occupier, with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner, and upon payment or tender of the proportion of water rate in respect of such house by this or the special act made payable in advance, lay down communication pipes and other necessary works for the supply of such house with water for domestic or other purposes, and shall keep the same in repair, and thereupon the occupier of such house shall be entitled to have a sufficient supply of water for his domestic purposes from the undertakers; and the undertakers may charge for such pipes and works, in addition to the water rate, such reasonable annual rent as shall be agreed upon, or, in case of dispute, as shall be settled by such inspector as aforesaid, when appointed, and in the meantime as shall in England or Ireland be settled by two justices, and in Scotland by the sheriff; and such rent shall be chargeable on and recoverable from the occupier, or, in his default, from the owner of such house, at the same times and in the same manner as water rates; and such pipes and other works shall not be subject to distress or to the landlord's hypothec for rent, nor to be taken in execution under any process of a court of law or equity, or under any fiat or sequestration in bankruptcy, against such occupier or against such owner, unless he shall have become the pro- Undertakers to lay down communication pipes on request of occupier and with consent of owners in houses of limited value.

10 Vict. c. 17. prior of the said pipes and works under the provisions hereinafter contained.

Penalty on undertakers for refusal to lay communication pipes.

Sect. 45. If, upon such request and consent, and upon tender or payment of such proportion of rate as aforesaid, the undertakers for seven days neglect or refuse to lay down such communication pipes or other works, they shall be liable to forfeit to the person so making such request the sum of 5*l.*, and a further sum of 40*s.* for every day during which such refusal or neglect shall continue after seven days from the making of such request and tender as aforesaid.

Undertakers to be at liberty to remove pipes, and recover expenses of owners or occupiers.

Sect. 46. If the occupier for the time being of the house in which any such communication pipes or other works and engines shall have been laid down by the undertakers refuse to pay for a supply of water, or if such house be unoccupied for twelve months, the undertakers may demand from the owner thereof payment of the amount of the principal money invested by them in providing and laying down such communication pipes and other works and engines; and if such owner, after ten days' notice given to him by the undertakers, neglect or refuse to pay such principal money, the undertakers may enter the house and remove such pipes and other works; and the balance of such principal money, after deducting the value of such pipes and other works, with all arrear of rent for such pipes and works, shall, in default of payment, be recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates are directed by this or the special act to be recovered: Provided always, that no greater sum shall be recovered from any such occupier than the amount of rent for the time being owing by him unless he refuse to discover the amount of rent owing by him; and that every such occupier shall be entitled to deduct from the amount of rent payable by him the sum so recovered from him, or which he shall have paid on demand.

No greater sum to be recovered from occupiers than amount of rent due.

Owner to be at liberty to purchase the pipes.

Sect. 47. The owner or reputed owner of any house where any such communication pipes or other works shall have been laid down by the undertakers may at any time pay off the amount then due to the undertakers in respect of the costs of providing and laying down such pipes and works, and all rent at that time due in respect thereof, and thereupon such pipes and works shall become the property of such owner, and all further rent in respect thereof shall cease to accrue to the undertakers.

### *Pipes to be laid by the Inhabitants.*

And with respect to the communication pipes to be laid by the inhabitants, be it enacted as follows:

Power to inhabitants to lay service pipes, giving the undertakers notice of the same.

Sect. 48. Any owner or occupier of any dwelling house or part of a dwelling house within the limits of the special act who shall wish to have water from the waterworks of the undertakers brought into his premises, and who shall have paid or tendered to the undertakers the portion of water rate in respect of such premises by this or the special act directed to be paid in advance, may open the ground between the pipes of the undertakers and his premises, having first obtained the consent of the owners and occupiers of such ground, and lay any leaden or other pipes from such premises, to communicate with the pipes of the undertakers, such pipes to be of a strength and material to be approved of by the undertakers, or, in case of dispute, to be settled in England or Ireland by two justices, and in Scotland by the sheriff, or in either case by the inspector to be appointed as aforesaid: Provided always, that every such owner or occupier shall, before he begins to lay any such pipe, give to the undertakers fourteen days notice of his intention to do so.

Communication with the pipes of the undertakers

Sect. 49. Before any pipe is made to communicate with the pipes of the undertakers, the person intending to lay such pipe shall give two

days' notice to the undertakers of the day and hour when such pipe is intended to be made to communicate with the pipes of the undertakers; and every such pipe shall be so made to communicate under the superintendence and according to the directions of the surveyor or other officer appointed for that purpose by the undertakers, unless such surveyor or officer fail to attend at the time mentioned in the said notice; and in case of any dispute as to the manner in which such pipe shall be so made to communicate, it shall in England or Ireland be settled by two justices, and in Scotland by the sheriff, or in either case by the inspector to be appointed as aforesaid.

10 Vict. c. 17.

to be made under the superintendence of their surveyor.

As to the settling of disputes.

Sect. 50. The bore of any such pipe as last aforesaid shall not exceed the prescribed limits, and where no limit shall be prescribed it shall not exceed half an inch, except with the consent of the undertakers.

Bore of service pipes.

Sect. 51. Any person who shall have laid down any pipe or other works, or who shall have become the proprietor thereof, may remove the same, after having first given six days' notice in writing to the undertakers of his intention so to do, and of the time of such proposed removal, and every such person shall make compensation to the undertakers for any injury or damage to their pipes or works which may be caused by such removal; and every person who shall remove any such pipe or other works without giving such notice as aforesaid shall forfeit to the undertakers a sum not exceeding 5*l.*, over and above the damage which he may be found liable to pay in any action at law, at the suit of the undertakers, for the damage done to their pipes or works.

Service pipes may be removed after giving notice of the same.

Penalty on removing pipes without notice.

Sect. 52. Any such owner or occupier may open or break up so much of the pavement of any street as shall be between the pipe of the undertakers and his house, building, or premises, and any sewer or drain therein, for any such purpose as aforesaid, doing as little damage as may be, and making compensation for any damage done in the execution of any such work: Provided always, that every such owner or occupier desiring to break up the pavement of any street, or any sewer or drain therein, shall be subject to the same necessity of giving previous notice, and shall be subject to the same control, restriction, and obligations in and during the time of breaking up the same, and also reinstating the same, and to the same penalties for any delay in regard thereto, as the undertakers are subject to by virtue of this or the special act.

Power to inhabitants to break up pavements, giving notice of the same.

Sect. 53. Every owner and occupier of any dwelling house, or part of a dwelling house within the limits of the special act shall, when he has laid such communication pipes as aforesaid, and paid or tendered the water rate payable in respect thereof, according to the provisions of this and the special act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes.

Owners or occupiers entitled to demand a supply of water for domestic purposes.

## Protection of Water.

And with respect to waste or misuse of the water supplied by the undertakers, be it enacted as follows:

Sect. 54. If by the special act it be provided that the water to be supplied by the undertakers need not be constantly laid on under pressure, every person supplied with water shall, when required by the undertakers, provide a proper cistern to hold the water with which he shall be so supplied with a ball and stop cock in the pipe bringing the water from the works of the undertakers to such cistern, and shall keep such cistern, ball and stop cock in good repair, so as effectually to prevent the water from running to waste; and in case any such person shall, when required by the undertakers, neglect to provide such cistern, ball or stop cock, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the pre-

Persons using the water to provide cisterns and cocks.

Penalty for neglect.



10 Vict. c. 17. mises of such person until such cistern and ball and stop cock shall be provided or repaired, as the case may require.

Penalty for suffering cistern, &c., to be out of repair.

Sect. 55. Every person supplied with water by the undertakers who shall suffer any such cistern, pipe, ball or stop cock to be out of repair, so that the water supplied to him by the undertakers shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding 5*l*.

Undertakers may repair cisterns, &c., and recover the expenses.

Sect. 56. The undertakers may repair any such cistern, pipe, ball or stop cock, so as to prevent any such waste of water, and the expenses of such repair shall be repaid to them by the person so allowing the same to be out of repair, and may be received as damages.

Power to surveyor employed by undertakers to enter houses to inspect, &c.

Sect. 57. The surveyor of the undertakers may, between the hours of nine of the clock in the forenoon and four of the clock in the afternoon, enter into any premises supplied with water by virtue of this or the special act in order to examine if there be any waste or misuse of such water.

Penalty for allowing persons to use the undertakers' water.

Sect. 58. Every owner or occupier of any tenement supplied with water under this or the special act who shall supply to any other person or wilfully permit him to take any such water from any cistern or pipe in such tenement, unless for the purpose of extinguishing any fire, or unless he be a person supplied with water by the undertakers, and the pipes belonging to him be, without his default, out of repair, shall forfeit to the undertakers for every such offence a sum not exceeding 5*l*.

Penalty for taking the undertakers' water without agreement.

Sect. 59. Every person who, not having agreed to be supplied with water by the undertakers, shall take any water from any reservoir, watercourse, or conduit belonging to the undertakers, or any pipe leading to any such reservoir, watercourse, or conduit, or from any cistern or other like place containing water belonging to the undertakers, other than such as may have been provided for the gratuitous use of the public, shall forfeit to the undertakers for every such offence a sum not exceeding 10*l*.

Penalty for destroying valves, &c.

Sect. 60. Every person who shall wilfully or carelessly break, injure, or open any lock, cock, valve, pipe, work, or engine belonging to the undertakers, or shall flush or draw off the water from the reservoirs or other works of the undertakers, or shall do any other wilful act whereby such water shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding 5*l*.

### *Fouling the Water.*

And with respect to the provision for guarding against fouling the water of the undertakers, be it enacted as follows :

Penalties for causing the water of the undertakers to be fouled.

Sect. 61. Every person who shall commit any of the offences next hereinafter enumerated shall for every such offence forfeit to the undertakers a sum not exceeding 5*l*., (that is to say,)

Every person who shall bathe in any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or wash, throw, or cause to enter therein any dog or other animal :

Every person who shall throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, aqueduct, or other waterworks as aforesaid, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing :

Every person who shall cause the water of any sink, sewer, or drain, steam engine, boiler, or other filthy water belonging to him or under his control, to run or be brought into any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or shall do any other act whereby the water of the undertakers shall be fouled :

And every such person shall forfeit a further sum of 20s. for each day (if more than one) that such last-mentioned offence shall be continued. 10 Vict. c. 17.

Sect. 62 imposes a penalty of 200*l.* for permitting substances produced in making gas to flow into the undertakers' works, such penalty to be recovered, with full costs of suit, in any of the superior courts.

Sect. 63 imposes a further penalty of 20*l.* in addition to the said penalty of 200*l.*, to be recovered in like manner for each day during which such washing or substance shall be brought or shall flow as aforesaid, or during which the act shall continue by which such water is fouled. Daily penalty during the continuance of the offence.

Sect. 64. Whenever the water supplied by the undertakers shall be fouled by the gas of any person making or supplying gas within the limits of the special act, such person shall forfeit to the undertakers for every such offence a sum not exceeding 20*l.*, and a further sum not exceeding 10*l.*, for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence. Penalty on gas makers causing water to be fouled.

Sect. 65. For the purpose of ascertaining whether the water of the undertakers be fouled by the gas of any person making or supplying gas within the limits of the special act, the undertakers may dig up the ground, and examine the pipes, conduits, and works of the persons making or supplying gas; provided that before proceeding so to dig and examine the undertakers shall give twenty-four hours' notice in writing to the person so making or supplying gas of the time at which such digging and examination is intended to take place, and they shall give the like notice to the persons having the control or management of the pavements or place where such digging shall take place, and they shall be subject to the like obligation of reinstating the road and pavement, and to the same penalties for delay, or any nonfeasance or misfeasance therein, as herein-before provided with respect to roads and pavements broken up by them for laying their pipes. Power to examine gas pipes, to ascertain cause of water being fouled.

Sect. 66. If upon such examination it appear that such water has been fouled by any gas belonging to such person, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the person making or supplying gas; but if upon such examination it appear that the water has not been fouled by the gas of such person, then the undertakers shall pay all the expenses of the examination and repair, and also make good to the said person any injury which may be occasioned to his works by such examination. The expenses to abide the result of the examination.

Sect. 67. The amount of the expenses of every such examination and repair, and any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are directed to be ascertained and recovered. (See *post*, s. 85.) How expense to be ascertained.

#### Water Rates.

And with respect to the payment and recovery of the water rates, be it enacted as follows:

Sect. 68. The water rates, except as hereinafter and in the special act mentioned, shall be paid by and be recoverable from the person requiring, receiving, or using the supply of water, and shall be payable according to the annual value of the tenement supplied with water, and if any dispute arise as to such value the same shall be determined by two justices. Rates to be payable according to the annual value of the premises.

Sect. 69. When several houses or parts of houses in the separate occupation of several persons are supplied by one common pipe, the several owners or occupiers of such houses or parts of houses shall be liable to the payment of the same rates for the supply of water as they Where several houses supplied by one pipe, each to pay.

10 Vict. c. 17. would have been liable to if each of such several houses or parts of houses had been supplied with water from the works of the undertakers by a separate pipe.

Rates to be paid quarterly.

Sect. 70. The rates shall be paid in advance by equal quarterly payments, in England or Ireland, at Christmas day, Lady day, Midsummer day, and Michaelmas day, and in Scotland at Martinmas, Candlemas, Whitsuntide, and Lammas, and the first payment shall be made at the time when the pipe by which the water is supplied is made to communicate with the pipes of the undertakers, or at the time when the agreement to take water from the undertakers is made.

Parties giving notice to discontinue use of water, or removing, to pay to the next quarter day.

Sect. 71. The occupier of any dwelling house or part of a dwelling house liable to the payment of any water rate, who shall give notice of his intention to discontinue the use of the water supplied by the undertakers, or who shall remove from his dwelling between any two quarterly days of payment, shall pay the water rate in respect of such dwelling house or part of a dwelling house for the quarter ending on the quarterly day of payment next after his quitting the same or giving such notice.

Owners of houses not exceeding 10l. rent to be liable to water rates.

Sect. 72. The owners of all dwelling houses or parts of dwelling houses occupied as separate tenements, the annual value of which houses or tenements shall not exceed the sum of 10l., shall be liable to the payment of the rates instead of the occupiers thereof; and the powers and provisions herein or in the special act contained for the recovery of rates from occupiers shall be construed to apply to the owners of such houses and tenements; and the person receiving the rents of any such house or tenement as aforesaid from the occupier thereof, on his own account, or as agent or receiver for any person interested therein, shall be deemed the owner of such house or tenement.

Tenants under existing leases to repay the owner.

Sect. 73. Provided always, that when any owner shall pay any such rate in respect of any such dwelling house or part of a dwelling house which shall be in the occupation of any tenant under any lease or agreement made prior to the passing of the special act, such tenant shall repay to the owner all sums which shall be so by him paid during the continuance of such lease, unless it have been agreed that the owner shall pay the water rates in respect of such dwelling house or part of a dwelling house; and every such sum of money payable by the tenant to the owner, under the provision hereinbefore contained, may be recovered, if the same be not paid upon demand, as arrears of rent could be recovered from the occupier by the said owner.

Rates how to be recovered.

Sect. 74. If any person supplied with water by the undertakers, or liable as herein or in the special act provided to pay the water rate, neglect to pay such water rate at any of the said times of payment thereof, the undertakers may stop the water from flowing into the premises in respect of which such rate is payable, by cutting off the pipe to such premises, or by such means as the undertakers shall think fit, and may recover the rate due from such person, if less than 20l., with the expenses of cutting off the water, and costs of recovering the rate, in the same manner as any damages for the recovery of which no special provision is made are recoverable by this or the special act (see *post*, s. 85); or if the rate so due amount to 20l. or upwards, the undertakers may recover the same, with the expenses of cutting off the water, by action in any court of competent jurisdiction.

#### *Profits of the Undertakers.*

Sect. 75 *et seq.* relate to the amount of profits of the undertaking to be divided among the undertakers; when profits are of a certain amount a reserve fund is to be provided to meet extraordinary claims.

Sect. 77. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it be first certified, in England or Ireland, by two justices, and in Scotland by the sheriff, that the sum so proposed to be taken is required for the purpose of meeting an extraordinary claim within the meaning of this or the special act.

10 Vict. c. 17.

Reserve fund not to be resorted to unless to meet an extraordinary claim.

Sect. 80. In England or Ireland the court of quarter sessions, and in Scotland the sheriff of such county, may, on the petition of any two water rate payers within the limits of the special act, appoint some accountant or other competent person, not being a proprietor of any waterworks, to examine and ascertain, at the expense of the undertakers, the actual state and condition of the concerns of the undertakers, and make report thereof to the said court at the then present or some following sessions, or to the sheriff, (the amount of such expense to be determined by the said court or sheriff,) and the said court or sheriff may examine any witnesses upon oath touching the truth of the said accounts, and the matters therein referred to; and if it thereupon appear to the said court or sheriff that the profits of the undertakers for the preceding year have exceeded the prescribed rate, the undertakers shall, in case the whole of the said reserved fund has been and then remains invested as aforesaid, and in case dividends to the amount hereinbefore limited have been paid, make such a rateable reduction in the rates for water to be furnished by them as in the judgment of the said court or sheriff shall be proper, but so as such rates, when reduced, shall insure to the undertakers, regard being had to the amount of profit before received, a profit as near as may be to the prescribed rate.

If profits are more than the amount prescribed a rateable reduction to be made in the price of water.

Sect. 81. Provided always, that if, in the case of any petition so presented, it appear to the said court or sheriff that there was no sufficient ground for presenting the same, the said court or sheriff may, if they or he think fit, order the petitioner to pay the whole or any part of the costs of or incident to such petition (the amount thereof to be determined by the said court or sheriff), and the costs so ordered to be paid shall be recoverable in the same way as damages are recoverable under this or the special act.

Court may order petitioner to pay the costs of groundless petition.

Sect. 82 imposes a 100% penalty on undertakers refusing to produce books, vouchers, &c., recoverable in the superior courts.

Sect. 83. And with respect to the yearly receipt and expenditure of the undertakers, be it enacted, that the undertakers shall, in each year after they have begun to supply water under this or the special act, cause an account in abstract to be prepared of the whole receipt and expenditure of all rates or other monies levied under the powers of this or the special act for the year preceding, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the undertakers, and also by the auditors thereof, if any; and a copy of such annual account shall be sent, free of charge, to the clerk of the peace for the county in which the waterworks are situated, if the waterworks are situated in England or Ireland, and if the waterworks are situated in Scotland, to the sheriff clerk of such county, on or before the thirty-first day of January in each year, under a penalty of 20% for each default; and the copy of such account so sent to the said clerk shall be kept by him, and shall be open to inspection by all persons, at all seasonable hours, on payment of 1s. for each inspection.

Annual account to be made up by undertakers, and sent to the clerk of the peace in England or Ireland, or to the sheriff clerk in Scotland, and to be open to inspection.

Sect. 84 relates to tender of amends in cases of action brought for acts done under this statute.

#### *Recovery of Damages and Penalties.*

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows:

10 Vict. c. 17.

Railways Clauses Consolidation Acts, 1845, as to damages, &c., to be incorporated with this and the special act.

In Ireland, part of penalties to be paid to guardians of unions.

All things required to be done by two justices in England and Ireland may, in certain cases, be done by one, and in Scotland by the sheriff, &c.

Persons giving false evidence liable to penalties of perjury.

Copies of special act to be kept by undertakers in their office, and deposited with the clerks of the peace, &c., and be open to inspection.

Penalty on undertakers failing to keep or deposit such copies.

Undertakers not exempt from provisions of any future general act.

Sect. 85. If the waterworks be in England or Ireland, the clauses of the Railways Clauses Consolidation Act, 1845 (see *Railways*, ante), with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special act, and if the waterworks be in Scotland, the clauses of the Railways Clauses Consolidation Act (Scotland), 1845, with respect to the recovery of damages not specially provided for, and to the determination of any other matter referred to the sheriff or to justices, shall be incorporated with this and the special act, and such clauses shall apply to the waterworks and to the undertakers respectively, and shall be construed as if the word "undertakers" had been inserted therein instead of the word "company."

Sect. 86. Provided always, that in Ireland, in the case of any penalty imposed by justices, where the application is not otherwise provided for, such justices may award not more than one half of such penalty to the informer, and shall award the remainder to the guardians of the poor of the union within which the offence shall have been committed, to be applied in aid of the poor rates of such union.

Sect. 87. All things herein or in the special act, or any act incorporated therewith, authorised or required to be done by two justices, may and shall be done, in England and Ireland, by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices, and in Scotland by the sheriff or steward of any county, stewartry, or ward, or his substitute.

Sect. 89. Every person who upon any examination upon oath under the provisions of this or the special act, or any act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

#### *Access to special Act.*

And with respect to access to the special act, be it enacted as follows:

Sect. 90. The undertakers shall at all times after the expiration of six months after the passing of the special act keep in their principal office of business a copy of the special act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace in England or Ireland, and of the sheriff clerk in Scotland, of the county in which the undertaking is situated, a copy of such special act, so printed as aforesaid; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep, the said copies of the special act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by 7 Will. 4 & 1 Vict. c. 83, an act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either house of parliament.

Sect. 91. If the undertakers fail to keep or deposit any of the said copies of the special act, as hereinbefore mentioned, they shall forfeit 20*l.* for every such offence, and also 5*l.* for every day afterwards during which such copy shall be not so kept or deposited.

Sect. 93. And be it enacted, that nothing herein or in the special act contained shall be deemed to exempt the undertakers from any general act relating to waterworks, or any act for improving the sanitary condition of towns and populous districts, which may be passed in the same session of parliament in which the special act is passed, or any future session of parliament.

The Waterworks Clauses Act, 1863, 26 & 27 Vict. c. 93, "An Act for consolidating in One Act certain Provisions frequently inserted in Acts relating to Waterworks," recites the last act, and enacts that that act and this act may be cited together as "The Waterworks Clauses Acts, 1847 and 1863.

26 & 27 Vict.  
c. 93.

Sect. 2. This act shall apply to any waterworks to which any special act hereafter passed and incorporating this act relates; and every such special act is hereinafter referred to as "the Special Act."

Application of act  
and interpretation  
of terms.

Terms used in this act have the same meanings as the same terms have when used in the Waterworks Clauses Act, 1847.

The provisions respecting the recovery of penalties contained in the last-mentioned act shall be incorporated with this act.

### *Security of Reservoirs.*

And with respect to the security of the reservoirs constructed by the undertakers, be it enacted as follows:

Sect. 3. Whenever any person interested complains to two justices that any reservoir constructed by the undertakers is in a dangerous state, such justices shall forthwith make inquiry into the truth of the complaint; or two justices, on their own view, and without complaint by any person, may proceed under the present provisions as if a complaint had been so made to them.

Power for justices  
to inquire as to  
danger of reser-  
voir.

Sect. 4. If, on any such inquiry, the justices are satisfied that the complaint is well founded, and that the reservoir is in a dangerous state, and that the danger is so imminent as not to admit of delay in removing the cause of complaint, they shall order such person as they think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

Order of justices  
for immediate  
repair.

Sect. 5. If, on any such inquiry, the justices are satisfied that there is good cause of complaint, but are not satisfied that the reservoir is in such an eminently dangerous state as not to admit of delay in removing the cause of complaint, they shall issue their summons to the undertakers to answer the complaint; and upon hearing the parties, the justices may, or upon default of appearance of the undertakers, then in their absence, the justices shall, order the undertakers within such period as the justices think reasonable and specify in the order, to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

Order of justices  
on undertakers to  
repair reservoir.

If the undertakers fail to execute or do within that period any such work or thing, the justices who made the order, or any other two justices, on being satisfied of such failure, may either order such persons as the justices think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint; or may, if they think fit, by order impose on the undertakers a penalty, not exceeding 10*l.* for every day during which such failure continues after the making of the order imposing the penalty.

Order of justices  
on failure of un-  
dertakers to  
repair.

Sect. 6. Any order of justices made in any of the cases aforesaid shall be in writing under their hands, and may be in the form set forth in the schedule to this act, with such variations as circumstances require.

Form of order.

Sect. 7. Any person acting under and in pursuance of any such order shall not be deemed a trespasser; and if any person wilfully obstructs any person lawfully acting in obedience to any such order, or wilfully does, or instigates, or suffers to be done, anything in contravention thereof, he shall for every such offence be liable to a penalty not exceeding 50*l.*

Persons acting  
under order not  
trespassers.

26 & 27 Vict.  
c. 93.

Order for pay-  
ment of costs and  
expenses.

Sect. 8. The justices may order all, or such part as they think fit, of the costs of and incident to the applying for and obtaining of any such order to be paid by the undertakers, and also all, or such part as the justices think fit, of the expenses of the works and things executed and done in pursuance of any such order by any person other than the undertakers, to be paid by the undertakers to such person as the justices appoint.

If the justices before whom the complaint is made think that there is no sufficient ground for the complaint, they may, if they think fit, order the complainant to pay to the undertakers the whole or any part of their costs of or incident to the complaint.

Appeal by under-  
takers.

Sect. 9. If the undertakers consider themselves aggrieved by any order or determination of justices under the present provisions, they may in like manner and subject to the like conditions as by the Railways Clauses Consolidation Act, 1845, are provided in the case of appeals in respect of penalties, appeal to the court of general or quarter sessions for the county or place where the cause of appeal arises; and that court may, on the hearing of the appeal, either affirm or quash the order or determination, or make such other order in the premises as may seem fit, and may make such order as to the costs, both of the original proceedings and of the appeal, as may seem fit; but the order or determination appealed against shall, pending the appeal, continue in force.

Undertakers not  
to be responsible  
for consequences  
of order.

Sect. 10. Notwithstanding anything in the special act contained, the undertakers shall not be liable to pay any damages, penalties, costs, charges, or expenses for or in respect of, or be answerable or accountable for, any diminution or cessation of the supply of water, or any other breach or nonperformance of their or any of their duties, liabilities, or obligations under the special act, that may be occasioned by or result from the execution of any such order.

Sect. 11 varies the above provisions as to Scotland.

### *Supply of Water.*

And with respect to the supply of water to be furnished by the undertaker, be it enacted as follows:

Supply for other  
than domestic  
purposes.

Sect. 12. A supply of water for domestic purposes shall not include a supply of water for cattle, or for horses, or for washing carriages where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose.

Want of supply  
for other than  
domestic pur-  
poses, when  
excused.

Sect. 13. Where the undertakers are authorised by the special act to supply water for other than domestic purposes, they shall not be liable, in the absence of express stipulation, under any agreement for the supply of water for other than domestic purposes, to any penalty or damages for not supplying such water, if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident.

Power to let  
meters for hire.

Sect. 14. Where the undertakers are authorised by the special act to supply water by measure, they may let for hire to any consumer of water so supplied any meter or instrument for measuring the quantity of water supplied and consumed, and any pipes and apparatus for the conveyance, reception, or storage of the water, for such remuneration in money as may be agreed upon between them and the consumer, which shall be recoverable in the same manner as rates due to the undertakers for water; and the meters, instruments, pipes, and apparatus shall not be subject to distress or to the landlord's hypothec for rent of the premises where the same are used, or be attached or taken in execution under any process of any court of law or equity, or under or in pursuance of any adjudication or order in bankruptcy, or other

legal proceeding, against or affecting the consumer of the water or the occupier of the premises, or other the person in whose possession the meters, instruments, pipes, and apparatus may be.

26 & 27 Vict.  
c. 93.

Sect. 15. The officers of the undertakers may enter any house, building, or lands to, through, or into which water is supplied by them by measure, in order to inspect the meters, instruments, pipes, and apparatus for the measuring, conveyance, reception, or storage of water, or for the purpose of ascertaining the quantity of water supplied or consumed, and may from time to time enter any house, building, or lands, for the purpose of removing any meter, instrument, pipe, or apparatus the property of the undertakers; and if any person hinders any such officer from entering or making such inspection, or effecting such removal, he shall for every such offence be liable to a penalty not exceeding 5*l.*; but, except with the consent of a justice or the sheriff, this power of entry shall be exercised only between the hours of ten in the forenoon and four in the afternoon.

Power for ascertaining quantity consumed by meter, and for removing meters, &c.

## *Protection of Water.*

And with respect to the waste or misuse of the water supplied by or belonging to the undertakers, be it enacted as follows:

Sect. 16. If any person supplied with water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption, or contamination of the water of the undertakers, they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or through which water is supplied by them to him, or for his use, and may cease to supply him with water, so long as the cause of injury remains or is not remedied.

Power to cut off water in certain cases.

Sect. 17. If any person supplied with water by the undertakers wilfully or negligently causes or suffers any pipe, valve, cock, cistern, bath, soil-pan, watercloset, or other apparatus or receptacle to be out of repair, or to be so used or contrived as that the water supplied to him by the undertakers is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to occasion or allow the return of foul air, or other noisome or impure matter, into any pipe belonging to or connected with the pipes of the undertakers, he shall for every such offence be liable to a penalty not exceeding 5*l.*

Penalty for waste, &c., of water by non-repair of pipes, &c.

Sect. 18. If any person—

First, not having from the undertakers a supply of water for other than domestic purposes, uses for other than domestic purposes, any water supplied to him by the undertakers; or

Secondly, having from the undertakers a supply of water for any other than domestic purposes, uses for any purposes other than those for which he is entitled to use the same, any water supplied to him by the undertakers,—

he shall for every such offence be liable to a penalty not exceeding 40*s.*, without prejudice to the right of the undertakers to recover from him the value of the water misused.

Penalty for application of water contrary to agreement.

Sect. 19. It shall not be lawful for the owner or occupier of any premises supplied with water by the undertakers, or any consumer of the water of the undertakers, or any other person, to affix or cause or permit to be affixed any pipe or apparatus to a pipe belonging to the undertakers, or to a communication or service pipe belonging to or used by such owner, occupier, consumer, or other person, or to make any alteration in any such communication or service pipe, or in any apparatus connected therewith, without the consent in every such case of the undertakers; and if any person acts in any respect in contravention of the provisions of the present section, he shall for every

Penalty for extension or alteration of pipes.



26 & 27 Vict.  
c. 93.

Penalty for use  
of water without  
agreement.

such offence be liable to a penalty not exceeding 5*l.*, without prejudice to the right of the undertakers to recover damages from him in respect of any injury done to their property, and without prejudice to their right to recover from him the value of any water wasted, misused or unduly consumed.

Sect. 20. If any person, not being supplied with water by the undertakers, wrongfully takes or uses any water from any reservoir, watercourse, conduit, or pipe belonging to the undertakers, or from any pipe leading to or from any such reservoir, watercourse, conduit, or pipe, or from any cistern or other like place containing water belonging to the undertakers, or supplied by them for the use of any consumer of the water of the undertakers, he shall for every such offence be liable to a penalty not exceeding 5*l.*

### *Recovery of Rates.*

And with respect to the recovery of water rates and other money, be it enacted as follows:

Recovery of rates  
by action.

Sect. 21. If any person refuses or neglects to pay to the undertakers any rate or sum due to them under the special act, they may recover the same, with costs, in any court of competent jurisdiction; and their remedy under the present section shall be in addition to their other remedies for the recovery thereof.

## SCHEDULE.

### Form of Order of Justices.

To A. B. of , &c.

*We the undersigned, two of her Majesty's justices of the peace acting for the [county] of , do hereby order and direct you [and such person and persons as you may require to aid and assist you herein,] forthwith to lower the water in the [here describe the reservoir and the extent to which the water is to be lowered], and to do all such works and things as are requisite to repair and make secure the said reservoir [and you shall do as little injury as possible to the property of the , and for acting as you are hereby directed this shall be your sufficient warrant].*

*Given under our hands this                      day of                      one thousand eight hundred and                      .*

A. B.  
C. D.

## Weights and Measures (a).

THE particular weights and measures of different sorts of goods may be seen under their respective titles; that which is treated of here, touches weights and measures in general.

For measures regulating the sale of gas, 22 & 23 Vict. c. 66. See "*Lighting and Watching.*"

I. *Of the different Kinds of Weights and Measures; the Providing, &c. of Copies of Standards; Stamping of, &c.; Ascertaining Corn Rents, &c.* p. 1205.

[5 Geo. 4, c. 74; 5 & 6 Will. 4, c. 63; 18 & 19 Vict. c. 72; 27 & 28 Vict. c. 117; 29 & 30 Vict. c. 82.]

(a) See in general, as to weights and measures, 2 *Chit. Commercial L.* 168 to 179; as to foreign weights, see *Holt's C. N. P.* 747.

II. *Examination of Weights, &c.; Penalties, &c. for having defective weights, &c.; Recovery of Penalties; Fees of Inspectors; Limitation of Actions, &c.* p. 1225.

[29 Geo. 2, c. 25; 31 Geo. 2, c. 17; 5 & 6 Will. 4, c. 63; 22 & 23 Vict. c. 56.]

III. *Repeal of Acts, and Recovery and Application of Penalties; Reservation of Rights, &c.* p. 1232.

IV. *Forms*, p. 1233.

I. **Of the different Kinds of Weights and Measures; the Providing, &c., of Copies of Standards; Stamping of, &c.; Ascertaining Corn Rents, &c.**

Before the passing of the 5 Geo. 4, c. 74, there were two kinds of weights used in England, and both warrantable, the one by law and the other by custom; but they were for several sorts of wares or commodities; for there was *troy weight* and *avoirdupois*. (*Dalt. c. 112.*) Divers weights.

*Troy weight* was by law; and thereby were weighed silk, gold, silver, pearl, and precious stones. And this had, as it still hath, to the pound twelve ounces. (*Id.*) Troy weight.

*Avoirdupois* (which, in French, is as much as to say, to have full weight) was by custom; and thereby were weighed all kinds of grocery wares, drugs, butter, cheese, flesh, wax, pitch, tar, tallow, wool, hemp, flax, iron, steel, lead, and all other commodities which bear the name of garbel, and whereof issueth a refuse or waste. And this had, as it still hath, to the pound sixteen ounces; and twelve pounds over were allowed to every hundred. (*Id.*) By the 5 & 6 Will. 4, c. 63, s. 10, *post*, all articles are to be sold by *avoirdupois weight*, except as there-after stated. Avoirdupois weight.

Before the passing of the 5 Geo. 4, c. 74, which we shall presently notice, no other weight or measure could properly be used but that sanctioned by the statutes repealed by that act; and it was illegal to sell corn by any other measure than the Winchester measure, of eight gallons to the bushel. (*R. v. Major*, 4 T. R. 750.) And the buyer of corn by any other than the Winchester measure was subject to the penalty of 40s., in addition to the value of the corn so bought, by the 22 & 23 Car. 2, c. 12. (*R. v. Arnold*, 5 T. R. 353; *Nolan*, 281.) And see *Tyson v. Thomas*, 1 M'Cl. & Y. 119, in which it was held that a contract for the sale of corn by the hobbet was in contravention of the provisions of the 22 Car. 2, c. 8, s. 2; and therefore an action could not lie for the breach of it. How far customary measure may be used.

And where the *reddendum* in a hospital renewed lease was so many quarters of corn, it was held, that it ought to be understood to mean legal quarters, reckoning the bushel at eight gallons, although the old leases, before the statute of 22 & 23 Car. 2, c. 12, contained the same *reddendum*, and although till lately the lessees paid by composition, reckoning the bushel at nine gallons. (*Hospital of St. Cross v. Howard de Walden*, 6 T. R. 338.)

So, also, in the case of *Noble v. Durrell*, 3 T. R. 271, it was determined that a custom in a particular market town (Bridgnorth), that butter should weigh eighteen ounces to the pound, was bad. But Lord *Kenyon*, C. J., said, "that he did not mean, in deciding that question, that a custom to sell butter in *lumps* of any number of ounces was not good." And *Buller*, J., said, "that this question did not interfere with the question, whether to sell butter in lumps of any particular weight, is good or not. That he had not seen any act which required persons not to sell more or less than a pound:

1. *Different  
Kinds and  
Standards, &c.*

Now abolished by  
statute.

Geo. 4, c. 74.

After 1st May,  
1825, standard  
yard defined as  
the measure of  
length shall be  
the unit of the  
measures of  
extension.

Foot.

Inch.

Pole or perch.

Furlong.

Mile.

Superficial mea-  
sures computed  
from said yard.

Rood.

Acre.

Standard pound  
defined as the  
measure of  
weight.

but the question there is, when a person is selling under the specific denomination of a *pound*, shall he be compellable to sell more than a pound?"

The 5 & 6 Will. 4, c. 63, s. 6, *post*, 1215, expressly abolishes all local and customary measures. The 14th sect. of that act points out the mode of ascertaining those measures in future. See *Tyson v. Thomas*, (1 *M'Clel. & Y.* 128,) in which it was decided before that act, that since the 5 Geo. 4, c. 74, a sale might be effected by any local weight or measure, if the ratio of such weight or measure to the standard weight or measure were specified in terms.

By 5 Geo. 4, c. 74, "An Act for ascertaining and establishing Uniformity of Weights and Measures," reciting that it is necessary for the security of commerce, and for the good of the community, that weights and measures should be just and uniform: and that, notwithstanding it is provided by the great charter, that there shall be but one measure and one weight throughout the realm, and by the treaty of union between England and Scotland, that the same weights and measures should be used throughout Great Britain as were then established in England, yet different weights and measures, some larger, and some less, are still in use in various places throughout the United Kingdom of Great Britain and Ireland, and the true measure of the present standards is not verily known, which is the cause of great confusion and of manifest frauds; for the remedy and prevention of these evils for the future, and to the end that certain standards of weights and measures should be established throughout the United Kingdom of Great Britain and Ireland: it is enacted, That the straight line or distance between the centres of the two points in the gold studs in the straight brass rod, now in the custody of the clerk of the House of Commons, whereon the words and figures "standard yard, 1760," are engraved, shall be, and the same is hereby declared to be, the original and genuine standard of that measure of length or lineal extension, called a yard; and that the same straight line or distance between the centres of the said two points in the said gold studs in the said brass rod, the brass being at the temperature of sixty-two degrees by Fahrenheit's thermometer, shall be, and is hereby denominated the "imperial standard yard," and shall be, and is hereby declared to be, the unit or only standard measure of extension, wherefrom or whereby all other measures of extension whatsoever, whether the same be lineal, superficial, or solid, shall be derived, computed, and ascertained; and that all measures of length shall be taken in parts or multiples, or certain proportions of the said standard yard; and that one third part of the said standard yard shall be a foot, and the twelfth part of such foot shall be an inch; and that the pole or perch in length shall contain five such yards and a half, the furlong two hundred and twenty such yards, and the mile one thousand seven hundred and sixty such yards.

Sect. 2. All superficial measure shall be computed and ascertained by the said standard yard, or by certain parts, multiples, or proportions thereof; and that the rood of land shall contain one thousand two hundred and ten square yards, according to the said standard yard; and that the acre of land shall contain four thousand eight hundred and forty such square yards, being one hundred and sixty square perches, poles, or rods.

Sect. 3 repealed.

Sect. 4. The standard brass weight of one pound troy weight, made in the year 1758, now in the custody of the clerk of the House of Commons, shall be, and the same is hereby declared to be, the original and genuine standard measure of weight, and that such brass weight shall be, and is hereby denominated the imperial standard troy pound, and shall be, and the same is hereby declared to be the unit or only standard measure of weight, from which all other weights shall be

derived, computed, and ascertained; and that one twelfth part of the said troy pound shall be an ounce; and that one twentieth part of such ounce shall be a pennyweight; and that one twenty-fourth part of such pennyweight shall be a grain; so that five thousand seven hundred and sixty such grains shall be a troy pound, and that seven thousand such grains shall be, and they are hereby declared to be, a pound avoirdupois; and that one sixteenth part of the said pound avoirdupois shall be an ounce avoirdupois; and that one sixteenth part of such ounce shall be a drachm.

Sect. 5 repealed.

Sect. 6. From and after the 1st day of May, 1825, the standard measure of capacity, as well for liquids as for dry goods not measured by heaped measure, shall be the gallon, containing ten pounds avoirdupois weight of distilled water weighed in air, at the temperature of sixty-two degrees of Fahrenheit's thermometer, the barometer being at thirty inches; and that a measure shall be forthwith made of brass, of such contents as aforesaid, under the directions of the lord high treasurer, or the commissioners of his Majesty's treasury of the United Kingdom, or any three or more of them for the time being; and such brass measure shall be, and is hereby declared to be the imperial standard gallon, and shall be, and is hereby declared the unit and only standard measure of capacity, from which all other measures of capacity to be used, as well for wine, beer, ale, spirits, and all sorts of liquids, as for dry goods not measured by heap measure, shall be derived, computed, and ascertained; and that all measures shall be taken in parts or multiples, or certain proportions of the said imperial standard gallon; and that the quart shall be the fourth part of such standard gallon; and the pint shall be one eighth of such standard gallon; and that two such gallons shall be a peck; and eight such gallons shall be a bushel; and eight such bushels a quarter of corn, or other dry goods, not measured by heaped measure.

Sects. 7, 8, 9, repealed.

Sect. 10. Provided, that nothing herein contained shall authorise the selling in Ireland, by measure, of any articles, matters, or things, which by any law in force in Ireland are required to be sold by weight only.

Sect. 11. Copies and models (a) of each of the standard yard, the said standard pound, the said standard gallon, and the said standard for heaped measure, and of such parts and multiples thereof, respectively, as the lord high treasurer of the United Kingdom of Great Britain and Ireland, or the said commissioners of his Majesty's treasury, or any three of them, for the time being, shall judge expedient, shall within three calendar months next after the passing of this act, be carefully made and verified under the direction of the said lord high treasurer, or the said commissioners of his Majesty's treasury, or any three of them, for the time being; and that the copies and models of the said standard yard, of the said standard pound, of the said standard gallon, and of the said standard for heaped measure, and of parts and multiples thereof, so forthwith to be made and verified as aforesaid, shall, within three calendar months after the passing of this act, be deposited in the office of the chamberlains of the exchequer at Westminster, and that copies thereof, verified as aforesaid, shall be sent to the lord mayor of London and the chief magistrate of Edinburgh and Dublin, and of such other cities and places, and to such other places and persons in his Majesty's dominions or elsewhere, as the lord high treasurer or commissioners of the treasury may from time to time direct. (See the 17th section of the 5 & 6 Will. 4, c. 63, *post*, 1218; as to providing copies after the passing of that act. See

1. *Different Kinds and Standards, &c.*

5 Geo. 4, c. 74.

Ounce.

Pennyweight.

Grain.

Troy.

Avoirdupois.

Drachm.

Standard gallon, containing ten pounds avoirdupois of water, to be the measure of capacity.

Gallon.

Quart.

Pint.

Peck.

Bushel.

Quarter.

Selling by measure instead of weight in Ireland.

Copies and models of the standard of length, weight, and measure to be made and verified under direction of the treasury.

(a) By the 5 & 6 Will. 4, c. 63, ss. 3 & 4, *post*, p. 1214, similarity in *shape*

with the standards is dispensed with as to copies already obtained.

1. *Different Kinds and Standards, &c.*

5 Geo. 4, c. 74.

Models and copies to be provided for counties, &c. (a).

To be placed for custody and inspection as herein mentioned.

Expenses of procuring such models and copies, how to be paid in England and Scotland respectively.

For ascertaining measures of capacity, where reference cannot easily be had to standards.

*post*, p. 1213, 29 & 30 Vict. c. 82, s. 1, custody of imperial standards transferred to the board of trade.)

Sect. 12. His Majesty's justices of the peace in every county, riding, or division in England or Ireland, or shire or stewartry in Scotland, and the magistrates in every city, town, or place (being a county within itself) in England or Ireland, and in every city or royal burgh in Scotland, shall, within six calendar months after the passing of this act, purchase for their respective counties, ridings, or divisions, shires or stewartries, cities, towns, or places, or cities or royal burghs, a model and copy of each of the aforesaid standards of length, weight, measure, and of each of the parts and multiples thereof; which models and copies, when so purchased, shall be compared and verified with the models and copies deposited with the chamberlains of the exchequer as aforesaid, in such manner as aforesaid, and upon payment of such fees as are at present payable to the said chamberlains upon the comparison and verification of weights and measures with the standards thereof; and such models and copies, when so compared and verified, shall be placed for custody and inspection with such person or persons, and in such place or places, as the said justices and magistrates, in their respective counties, ridings, and divisions, and shires or stewartries, cities, towns, and places, or cities or royal burghs, shall appoint, and the same shall be produced by the keeper or keepers thereof, upon reasonable notice, at such time or times and place or places, within each such county, riding, or division, shire, or stewartry, city, town, or place, or city or royal burgh, as any person or persons shall, by writing under his or their hand or hands require.

Sect. 13. The expense of procuring and transmitting such models and copies for the respective counties, ridings, or divisions, cities, towns, or places, shall be paid in that part of the said United Kingdom of Great Britain and Ireland called England, out of the rates payable in such counties, ridings, or divisions, cities, towns, or places; and in that part of the said United Kingdom called Scotland, such expenses in the respective shires and stewartries, and cities or royal burghs, shall be assessed by the commissioners of supply upon such shires and stewartries, and upon cities or royal burghs, by the magistrates thereof, and shall be paid along with the land-tax payable in such shires or stewartries, and cities or royal burghs, to the collectors of the land-tax in such shires or stewartries, and cities or royal burghs, respectively; and in Ireland such expenses shall be paid in the respective counties, and counties of cities and counties of towns, by presentments to be made by grand juries; and the collectors of such county rates in England, of land-tax in Scotland, and of the assessments under grand jury presentments in Ireland, shall have such and the same powers of levying and recovering the assessments to be made under this act, as are competent to them for levying and recovering the said county rates, land-tax, and grand jury assessments respectively: and the said collectors respectively shall, out of the proceeds of such assessments, pay the expenses of procuring and transmitting such models and copies as aforesaid accordingly. [By the 5 & 6 Will. 4, c. 63, s. 22, *post*, 1221, the expense of providing weights and measures, as regulated by sect. 17, is to be paid out of the county rate.]

Sect. 14. That in all cases of dispute respecting the correctness of any measure of capacity, arising in a place where recourse cannot be conveniently had to any of the aforesaid verified copies or models of the standard measures of capacity, or parts or multiples of the same, it shall and may be lawful to and for any justice of the peace, or magistrate, having jurisdiction in such place, to ascertain the content of such measure of capacity by direct reference to the weight of pure or rain water which such measure is capable of

containing; ten pounds avoirdupois weight of such water, at the temperature of sixty-two degrees by Fahrenheit's thermometer, being the standard gallon ascertained by this act, the same being in bulk equal to two hundred and seventy-seven cubic inches, and two hundred and seventy-four one-thousandth parts of a cubic inch, and so in proportion for all parts or multiples of a gallon.

Sect. 15. From and after the 1st day of May, 1825, all contracts, bargains, sales, and dealings which shall be made or had within any part of the United Kingdom of Great Britain and Ireland, for any work to be done, or for any goods, wares, merchandize, or other thing to be sold, delivered, done, or agreed for by weight or measure, where no special agreement shall be made to the contrary, shall be deemed, taken, and construed to be made and had according to the standard weights and measures ascertained by this act; and in all cases where any special agreement shall be made, with reference to any weight or measure established by local custom, the ratio or proportion which every such local weight or measure shall bear to any of the said standard weights or measures, shall be expressed, declared, and specified in such agreement, or otherwise such agreement shall be null and void. (See post, 27 & 28 Vict. c. 117, p. 1223.)

In the case of *Watts v. Friend*, tried at Maidstone, 11th of August, 1828, before Lord Tenterden, the declaration was in assumpsit for non-delivery of seed of turnips. It appeared that the contract was made verbally, for the sale of the seed, whilst the turnips were growing. And the sale was by the strike, and by Winchester measure, although the parties knew that the imperial standard was the lawful measure. Lord Tenterden observed, "that parties must, since the 5 Geo. 4, c. 74, s. 15, virtually contract to sell by the imperial measure, and if not, they must, in and by the very words of their contract, state the terms of their bargain, for otherwise the provisions of the act would be avoided, and that it was therefore questionable whether the parties could, upon the parol contract, recover; and the point was reserved." The case afterwards came on for argument, but went off on another point, the contract being deemed within the statute of frauds, and void for want of being in writing. Lord Tenterden, C. J., though not called on to decide the above point, said, "I cannot forbear observing, that if a contract for a sale by the Winchester bushel, made as this was, is to be deemed valid, the object of the 5 Geo. 4, c. 74, will be in a great degree defeated." (10 B. & C. 448.)

1. *Different Kinds and Standards, &c.*

5 Geo. 4, c. 74.

All contracts for sale, &c., by weight or measure shall relate to the standard, unless the contrary is specified.

Sect. 16, repealed.

Sect. 17. And for the purpose of ascertaining and fixing the payments to be made in consequence of all existing contracts or rents in England and Ireland, payable in grain or malt, or in any other commodity or thing, and in consequence of any toll or rate heretofore payable, according to the weights and measures heretofore in use; enacts, that at the general or quarter sessions of the peace to be holden in every county, riding, or division, and in every city, town, or place (being a county of itself) in England or Ireland, next after the expiration of six calendar months after the passing of this act, or at any general \* quarter sessions of the peace to be holden \* *Sic.* thereafter, an inquisition shall be taken before the justices assembled at such general or quarter sessions, by the oaths of twelve substantial freeholders of the said respective counties, cities, towns, or places, having lands or tenements to the value of 100*l.* per annum or upwards, to be summoned by the sheriff or proper officer of every such county, city, town, or place, to inquire into and ascertain the amount, according to the standard of weight or measure by this act established, of all contracts or rents payable in grain or malt, or any other commodity or thing, or with reference to the measure or weight of any such grain, malt, or other commodity or thing, and the amount of any toll or rate heretofore payable according to any weights and measures here-

For ascertaining rents, &c., payable in grain or malt, &c., in England and Ireland.

1. *Different  
Kinds and  
Standards, &c.*

5 Geo. 4, c. 74.

Tables of equalization to be made and constructed under the authority of the treasury.

Tables to be constructed for the collection of the customs and excise, &c.

In Westminster.

Vessels of wine, and other gaugable liquors imported into London, liable to

tofore in use within such counties, cities, towns, or places respectively; and such inquisitions, when taken, shall be transmitted by the respective clerks of the peace of the same counties respectively, or by the mayor, bailiff, or other head officer of every such city, town, or place (being a county of itself), into his Majesty's courts of exchequer at Westminster and Dublin, respectively, and shall there be enrolled of record, and shall and may be given in evidence in any action or suit at law or in equity; and the amount so to be ascertained shall be the rule of payment in regard to all such contracts, rents, toll, or rates, in all time coming; and the costs and charges of such inquisitions, and the inrolments thereof, shall be paid and defrayed, in England, out of the general rate or stock of every such county, riding, division, city, town, or place (being a county of itself), and in Ireland, by presentments of the several grand juries.

[By the 5 & 6 Will. 4, c. 63, s. 14, *post*, p. 1217, the inquisition named in this provision is to be in future taken on the application of any party interested, and at the expense of the party applying.]

Sect. 18 relates to the ascertaining rents, &c., payable in grain or malt, &c., in Scotland.

Sect. 19. As soon as conveniently may be after such inquisitions shall have been made and enrolled in England, Ireland, and Scotland, respectively, accurate tables shall be prepared and published, under the authority of the said commissioners of his Majesty's treasury, showing the proportions between the weights and measures heretofore in use, as mentioned in such inquisitions, and the weights and measures hereby established, with such other conversions of weights or measures as the said commissioners of his Majesty's treasury may deem to be necessary; and after the publication of such tables, all future payments to be made shall be regulated according to such tables.

Sect. 20. And whereas the weights and measures by which the rates and duties of the customs and excise, and other his Majesty's revenue, have been heretofore collected, are different from the weights and measures of the same denominations directed by this act to be universally used: and whereas the alteration of such weights and measures may, without due care had therein, greatly affect his Majesty's revenue, and tend to the diminishing of the same: for the prevention thereof, be it therefore enacted, That so soon as conveniently may be after the passing of this act, accurate tables shall be prepared and published, under the direction of the said commissioners of the treasury for the time being, in order that the several rates and duties of customs and excise, and other his Majesty's revenue, may be adjusted and made payable according to the respective quantities of the legal standards directed by this act to be universally used; and that, from and after the said 1st day of May, 1825, and the publication of such tables, the several rates and duties thereafter to be collected by any of the officers of his Majesty's customs or excise, or other his Majesty's revenue, shall be collected and taken according to the calculations in the tables to be prepared as aforesaid.

It should also be noticed, that the 5 Geo. 4, c. 55, s. 9, provides that tables of weights and measures shall be constructed under the directions of the treasury, by which the duties, &c., of customs and excise shall be uniformly collected throughout the United Kingdom. (See "*Excise*.")

[See sects. 21, 22, 23, of the 5 Geo. 4, c. 74, *post*, p. 1232.]

Sect. 24, (*post*, 1232), contains a proviso as to the 31 Geo. 2, c. 17, which empowers the dean and chapter of Westminster, &c., to appoint a proper officer to sign and seal weights and measures.

Sect. 25. That from and after the passing of this act, all tuns, pipes, tertians, hogsheads, or other vessels of wine, oil, honey, and other gaugable liquors, imported or brought into the port of the city of London, and landed within the said city and the liberties thereof, shall

be subject and liable to be gauged, as heretofore hath been of right accustomed, by the lord mayor of the said city for the time being, by virtue of his office of gauger, or by his sufficient deputies, lawfully appointed, save and except that the contents of all such tuns, pipes, tertians, hogsheads, and other vessels, shall and may be ascertained by the standard measure of capacity for liquids directed by this act, and the multiples thereof: and that all such tuns, pipes, tertians, hogsheads, or other vessels that shall be found wanting of the true contents which such tuns, pipes, tertians, hogsheads, or other vessels ought to be of, to be ascertained as aforesaid, together with the wine and other liquids therein contained, shall be subject and liable to the like seizures and forfeitures as is or are provided by any act or acts of parliament heretofore made for ascertaining the true contents of tuns, pipes, tertians, hogsheads, and other vessels of wine, oil, honey, and other gaugeable liquors; and that the moieties of such forfeitures due to his Majesty, his heirs and successors, shall be, in like manner as heretofore hath been accustomed, accounted for by the lord mayor for the time being, as such gauger, and his deputies, to his Majesty, his heirs, and successors, in his and their court of exchequer at Westminster.

Sect. 26 saves the right of the mayor and commonalty and citizens of the city of London, &c., to, or concerning the office of gauger of wines, &c., imported within the city of London.

By 18 & 19 Vict. c. 72, "An Act for legalizing and preserving the restored Standards of Weights and Measures," reciting 5 Geo. 4, c. 74, and the enactments of sects. 1 & 4 thereof: And that by the said act provision was made for restoring the said imperial standard yard and the said imperial standard troy pound respectively, in case of loss, destruction, defacement, or other injury, by reference to the length of a pendulum and to the weight of a cubic inch of water respectively: and that the said imperial standard yard and standard pound troy were destroyed in the fire at the Houses of Parliament: and that by the researches of scientific men doubts were thrown on the accuracy of the methods provided by the said act for the restoration of the said standards; and that there exist bars and weights which had been accurately compared with the said standard yard and standard pound troy so destroyed as aforesaid, which afforded sufficient means for restoring such original standards; and that scientific men acting for that purpose under the direction of the commissioners of her Majesty's treasury have constructed a standard of length equivalent to the imperial standard yard so destroyed, and four accurate copies of the standard so constructed, and it having been deemed expedient that the standard for reference as a measure of weight should be a pound avoirdupois, there has been constructed in like manner a pound weight avoirdupois equivalent to the pound avoirdupois of seven thousand such grains as are mentioned in the said recited act, and four accurate copies of the said pound avoirdupois so constructed: and that the form adopted for the standard of length and for all the copies thereof is that of a solid square bar thirty-eight inches long and one inch square in transverse section, the bar being of bronze or gun metal; near to each end a cylindrical hole is sunk (the distance between the centres of the two holes being thirty-six inches) to the depth of half an inch; at the bottom of this hole is inserted in a smaller hole a gold plug or pin about one tenth of an inch in diameter, and upon the surface of this pin there are cut three fine lines at intervals of about the one hundredth part of an inch transverse to the axis of the bar, and two lines at nearly the same interval parallel to the axis of the bar; the measure of length is given by the interval between the middle transversal line at one end and the middle transversal line at the other end, the part of each line which is employed being the point midway between the longitudinal lines; and the said points are

### 1. *Different Kinds and Standards, &c.*

5 Geo. 4, c. 74.

gauged as heretofore by lord mayor or his deputies.

Contents to be ascertained by standard measure of this act.

18 & 19 Vict. c. 72.



1. *Different  
Kinds and  
Standards, &c.*

18 & 19 Vict. c. 72.

herein referred to as the centres of the said gold plugs or pins: and that the standard pound avoirdupois so constructed as aforesaid, and the copies thereof, are of platinum, the form being that of a cylinder nearly 1·35 inch in height and 1·15 inch in diameter, with a groove or channel round it whose middle is about 0·34 inch below the top of the cylinder, for insertion of the points of the ivory fork by which it is to be lifted; the edges are carefully rounded off: and whereas the standard of length so constructed as aforesaid, the bronze bar, being marked "copper 16 oz., tin  $2\frac{1}{2}$ , zinc 1. Mr. Baily's metal. No. 1. standard yard at  $62^{\circ}\cdot00$  Fahrenheit. Cast in 1845. Troughton & Simms, London," and the said standard of weight marked P.S. 1844, 1 lb., have respectively been deposited in the office of the exchequer at Westminster, and one of the said copies of the said standard of length, the bronze bar, being marked "copper 16 oz., tin  $2\frac{1}{2}$ , zinc 1. Mr. Baily's metal. No. 2. standard yard at  $61^{\circ}\cdot94$  Fahrenheit. Cast in 1845. Troughton & Simms, London," and one of the said copies of the standard of weight marked No. 1, P.C. 1844, 1 lb., have been deposited at the Royal Mint; and one other of the said copies of the standard of length, the bronze bar, being marked "copper 16 oz., tin  $2\frac{1}{2}$ , zinc 1. Mr. Baily's metal. No. 3. standard yard at  $62^{\circ}\cdot10$  Fahrenheit. Cast in 1845. Troughton & Simms, London," and one other of the said copies of the standard of weight marked No. 2, P.C. 1844, 1 lb., have been delivered to the Royal Society of London; and one other of the said copies of the standard of length, the bronze bar, being marked "copper 16 oz., tin  $2\frac{1}{2}$ , zinc 1. Mr. Baily's metal. No. 5. standard yard at  $62^{\circ}\cdot16$  Fahrenheit. Cast in 1845. Troughton & Simms, London," and one other of the said copies of the standard of weight marked No. 3., P.C. 1844, 1 lb., have been deposited in the Royal Observatory of Greenwich; and the other of the said copies of the standard of length, the bronze bar, being marked "copper 16 oz., tin  $2\frac{1}{2}$ , zinc 1. Mr. Baily's metal. No. 4. standard yard at  $61^{\circ}\cdot98$  Fahrenheit. Cast in 1845. Troughton & Simms, London," and the other of the said copies of the standard of weight marked No. 4. P.C. 1844, 1 lb., have been immured in the cill of the recess on the east side of the lower waiting hall in the new palace at Westminster: and that it is expedient to legalize the standards so constructed and to provide for the preservation thereof: it is enacted,

Sect. 1, that sects. 3 and 5 of the said act of 5 Geo. 4, c. 74, be repealed.

Restored standard  
yard established.

Sect. 2. The straight line or distance between the centres of the two gold plugs or pins in the bronze bar deposited in the office of the exchequer as aforesaid shall be the genuine standard of that measure of length called a yard, and the said straight line or distance between the centres of the said gold plugs or pins in the said bronze bar (the bronze being at the temperature of sixty-two degrees by Fahrenheit's thermometer) shall be and be deemed to be the imperial standard yard.

Standard pound  
avoirdupois.

Sect. 3. The said weight of Platinum marked P.S. 1844, 1 lb., deposited in the office of the exchequer as aforesaid, shall be the legal and genuine standard measure of weight, and shall be and be denominated the imperial standard pound avoirdupois, and shall be deemed to be the only standard measure of weight from which all other weights and other measures having reference to weight shall be derived, computed, and ascertained, and one equal seven thousand seven hundred and sixty such grains shall be and be deemed to be a pound troy.

Provisions of  
Geo. 4, c. 74,  
not hereby re-  
pealed, &c., to  
remain in force.

Sect. 4. All the provisions of 5 Geo. 4, c. 74, now in force, and not hereby repealed, and all other enactments now in force in relation to weights and measures, shall continue in force and be applicable to the standards of weight and measure hereby established, as if the

same standards had been established by the said 5 Geo. 4, c. 74, instead of the standard yard and standard pound troy so destroyed as aforesaid, and as if the pound troy of five thousand seven hundred and sixty grains had been established as a derivative standard computed with reference to the pound avoirdupois.

Sect. 5. All weights and measures, and copies of weights and measures, which have been compared and verified or authenticated according to law as copies of the imperial standard weights and measures, shall remain and be legal weights and measures for the same time, for the same purposes, and in like manner as if this act had not been passed.

Sect. 7. If at any time hereafter the said imperial standard yard and standard pound avoirdupois respectively, or either of them, be lost, or in any manner destroyed, defaced, or otherwise injured, the commissioners of her Majesty's treasury may cause the same to be restored by reference to or adoption of any of the copies so deposited as aforesaid, or such of them as may remain available for that purpose.

By the Standards of Weights and Measures and Coinage Act 1866, 29 & 30 Vict. c. 82, "An Act to amend the Acts relating to the Standard Weights and Measures and to the Standard Trial pieces of the Coin of the Realm," it is enacted that,

Sect. 1. The custody of the imperial standards of length and of weight, and of all secondary standards of weights and measures, and of all balances, apparatus, books, documents, and things used in connexion therewith or relating thereto, deposited in the office of the exchequer at Westminster, or in the custody of the comptroller general of the exchequer, shall be and the same is hereby transferred to the board of trade, who shall have the charge thereof, and shall have and perform all such powers and duties relative thereto, or otherwise relative to standards of weights and measures, as are at the passing of this act by law vested in or imposed on the commissioners of her Majesty's treasury, or in or on the comptroller general of the exchequer; and all things done by the board of trade or any of their officers, or at their office, in relation to standards of weights and measures in pursuance of this act, shall be as valid and shall have the like effect and consequences as if the same had been done by the commissioners of her Majesty's treasury, or by the comptroller general or other officer of the exchequer, or at the office of the exchequer.

Sect. 2. The board of trade shall once in every ten years after the passing of this act cause the three parliamentary copies of the imperial standards of length and of weight deposited at the royal Mint, with the Royal Society of London, and in the Royal Observatory of Greenwich, respectively, to be compared with the imperial standards of length and of weight and with each other.

Sect. 3. The secondary standards of length and of weight and of capacity, which before the passing of this act have been in use in the office of the exchequer at Westminster, and have been known as the exchequer standards, and all legal secondary standards for the time being in use under the direction of the board of trade in pursuance of this act, shall be called the board of trade standards.

Sect. 4. As soon as conveniently may be after the passing of this act, and afterwards once at least in every five years, the board of trade shall cause the board of trade standards for the time being in use to be compared with the imperial standards of length and of weight and with each other, and to be adjusted or renewed, if requisite.

By sects. 5, 6, & 7, power is given by order in council to define the amount of error to be tolerated in other secondary standards of length and of weight and of capacity when compared with the board of trade

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18 & 19 Vict. c. 72.

Copies of the old standards to continue to be legal.

Provision for restoration of standards in case of loss, &c.

29 & 30 Vict. c. 82.

Transfer to board of trade of custody of imperial standards of weights and measures, &c.

Periodical comparison of imperial standards and three of the parliamentary copies.

Working secondary standards to be called board of trade standards.

Periodical comparison of board of trade standards with imperial standards.

1. *Different Kinds and Standards, &c.*

29 & 30 Vict. c. 82.

standards. And that where at any time any secondary standard of length or of weight or of capacity has been derived from the imperial standards of length and of weight respectively, and duly verified and authenticated by comparison therewith, to declare the same to be a legal secondary standard of length or of weight or of capacity, as the case may be. And further to declare that any legal secondary standard of length or of weight or of capacity specified in such order shall cease to be such a standard.

Sect. 8 provides for the publication of all orders in council made under this act.

Abolition of stamp duty and fees.

Sect. 9. From and after the passing of this act an indenture of verification of any standard, or any indorsement on any such indenture, shall not be liable to stamp duty, nor shall any fee be payable on the verification or re-verification of any standard.

Comparison of standards, &c. in aid of scientific researches.

Sect. 10 provides that the board of trade shall constitute standard weights and measures department of board of trade.

Sect. 11. In addition to the performance of the duties imposed on the board of trade by this act, it shall be the duty of the warden of the standards to conduct all such comparisons, verifications, and other operations with reference to standards of length, weight, or capacity in aid of scientific researches, or otherwise, as the board of trade from time to time authorise or direct.

By sect. 12 the warden shall every year make a report on the proceedings of the standard weights and measures department, &c.

5 & 6 Will. 4, c. 63.

5 & 6 Will. 4, c. 63, "An Act to repeal an Act of the fourth and fifth year of his present Majesty relating to Weights and Measures, and to make other provisions instead thereof," repeals 4 & 5 Will. 4, c. 49.

Provisions in 5 Geo. 4, c. 74, and 6 Geo. 4, c. 12, as to models and copies of standard weights and measures repealed.

Sect. 3 recites the passing of the 5 Geo. 4, c. 74, *ante*, p. 1206, and that "notwithstanding the provisions of the said recited act, many sets of weights and measures of old accustomed and different shapes have been made and verified and stamped by the chamberlains as well as by the auditor in the exchequer, as models of the said new standards, and have been used as standard weights and measures under the said recited act, although different in shape and form from the standards prescribed by the said recited act of the fifth year aforesaid; and it is therefore expedient that such standard weights and measures should be made legal, and that the comptroller general or some other officer of the exchequer duly authorised should be empowered to compare and verify, and stamp as so compared and verified, standards of length, weight, or measure, although not exact models and copies in shape and form of the respective standards of length, weight, and measure deposited under the provisions of the said first recited acts in the office of the said chamberlains and auditor: and that it is expedient that the use of all weights and measures not in conformity with the weights and measures established by the said recited acts should be prohibited, and that the use of the heaped measure should be abolished;" enacts, "That so much of the said last mentioned recited act as requires that all weights and measures shall be models and copies in shape or form of the standards deposited in the exchequer, and also so much of the said recited acts as allow the use of weights and measures not in conformity with the imperial standard weights and measures established by the said acts, or allow goods or merchandise to be bought or sold by any weights or measures established by local custom or founded on special agreement, shall be and the same are hereby repealed."

Weights and measures stamped at the exchequer declared legal, although not similar in shape to those required by recited acts.

Sect. 4. All weights and measures which have been so verified and stamped at the exchequer at Westminster as copies of the standard weights and measures, corresponding in weight and capacity with those established by the said recited acts, shall be deemed and taken to be legal weights and measures, to be used for comparison as copies of the imperial standard weights and measures, although not similar

in shape to those required under the provisions of the said recited acts; and that the comptroller general, or some other officer of the exchequer at Westminster duly authorised, may compare and verify, and stamp as so compared and verified, as correct standard measures of a yard, and as correct standard weights, and as correct standard measures of capacity, any weights and measures which shall correspond in length, weight, and capacity with the standards, or parts or multiples thereof respectively, deposited in the exchequer under the said act of the fifth year aforesaid, although such weights and measures may not be models or copies in shape or form of the standards so deposited as aforesaid; anything in the said recited acts to the contrary notwithstanding.

By 22 & 23 Vict. c. 56, "An Act to amend 5 & 6 Will. 4, c. 63, relating to Weights and Measures," by s. 9, to be construed and taken together with 5 & 6 Will. 4, c. 63, so far as the provisions are consistent, reciting that it was expedient that the 5 & 6 Will. 4, c. 63 should be amended: it is enacted that,

Sect. 1. No model or copy of any of the imperial standards of weights shall be deemed legal, or used for the purpose of enforcing the provisions of this act or the 5 & 6 Will. 4, c. 63, unless the same have been compared or re-verified by the comptroller general or some other officer of the exchequer duly authorised, within five years before the time when it is so used; and no model or copy of any of the imperial standards of measures shall be deemed legal or used for the purposes aforesaid unless it have been compared or re-verified as aforesaid within ten years before the time when it is so used, or, in any county containing more than one district for the inspection of weights and measures, unless such model or copy have been compared by the inspector of weights and measures in the district in which it is used, in the presence of one justice of the county, with a model or copy of the imperial standard of weight duly compared and verified at the exchequer within five years of its being so used, and found on such comparison by such inspector to be correct, or with a model or copy of the imperial standard of measure duly compared and verified at the exchequer within ten years of its being so used, and found on such comparison by such inspector to be correct; and the expenses incurred in and about such comparison or re-verification of any such model or copy of any imperial standard of weight or measure shall in all cases be paid in the same manner and out of the same funds as is provided for the procuring of such models and copies.

5 & 6 Will. 4, c. 63, s. 5. All copies of the imperial standard weights and measures which may have become defective, or have been mended in consequence of any wear or accident, shall forthwith be sent to the exchequer at Westminster for the purpose of being again compared and verified, and shall be stamped as re-verified copies of the imperial standard weights and measures, provided that the comptroller general or other officer appointed for such verification, shall deem them fit to be used for the purposes of standards; and every new comparison and verification shall be indorsed upon the original indenture of verification; and the comptroller general or other officer at the exchequer duly authorised, shall keep an account or register of all copies of the imperial standard weights and measures that shall have been verified at the exchequer. [See s. 27, *post*, 1223.]

Sect. 6. From and after the passing of this act, the measure called the Winchester bushel, and the lineal measure called the Scotch ell, and all local or customary measures, shall be abolished; and every person who shall sell, by any denomination of measure other than one of the imperial measures, or some multiple or some aliquot part, such as half, the quarter, the eighth, the sixteenth, or the thirty-second parts thereof, shall, on conviction, be liable to a penalty not exceeding

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5 & 6 Will. 4, c. 63  
Superintending officer may verify and stamp weights and measures of other form than those prescribed by 5 Geo. 4, c. 74.

22 & 23 Vict. c. 56.

Imperial standard of weights and measures when to be adjusted.

5 & 6 Will. 4, c. 63.  
Copies of the standard weights and measures, which shall have been worn and mended, to be sent to the exchequer to be re-verified.

Officer to keep a register thereof.

Local and customary measures abolished.

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Kinds and  
Standards, &c.*

5 & 6 Will. 4, c. 63.

Not to prevent  
sale of articles in  
certain vessels.

Heaped measure  
abolished.

Articles heretofore  
sold by heaped  
measure, how to  
be sold.

Coals to be sold by  
weight and not  
by measure.

All articles to be  
sold by avoirdupois,  
except as  
herein stated.

The stone weight,  
hundred weight,  
and ton.

Contents of  
weights and mea-  
sures to be  
stamped on them.

Weights made of

the sum of 40s. for every such sale: Provided always, that nothing herein contained shall prevent the sale of any articles in any vessel, where such vessel is not represented as containing any amount of imperial measure, or of any fixed, local, or customary measure heretofore in use. [See *ante*, p. 1205.]

Sect. 7. And whereas the heaped measure is liable to considerable variation; be it therefore enacted, That from and after the passing of this act so much of the said recited acts as relate to the heaped measure shall be and are hereby repealed, and the use of the heaped measure shall be abolished, and all bargains, sales, and contracts which shall be made after the passing of this act by the heaped measure shall be null and void; and every person who shall sell any articles by the heaped measure shall, on conviction, be liable to a penalty not exceeding 40s. for every such sale.

Sect. 8. And whereas some articles heretofore sold by heaped measure, are from their size and shape incapable of being stricken, and from their nature and quality may not be conveniently sold by weight; be it therefore enacted, That all such articles may henceforth be sold by a bushel measure, corresponding in shape with the bushel prescribed in and by the said act passed in the fifth year of the reign of his late Majesty for the sale of heaped measure, or by any multiple, or by some aliquot part, such as the half, the quarter, or the eighth part thereof, filled in all parts as nearly to the level of the brim as the size and shape of the articles sold will admit; Provided always, that nothing herein contained shall prevent the sale by weight of any article heretofore sold by heaped measure.

Sect. 9. And whereas the sale of all coals, slack, culm, and cannell of every description by weight, and not by measure, would tend greatly to prevent the commission of frauds and impositions in the vend and delivery of such coals, slack, culm, and cannell of every description; be it therefore enacted, That from and after the 1st day of January, 1836, all coals, slack, culm, and cannell of every description shall be sold by weight and not by measure; and every person who shall from and after the 1st day of January, 1836, sell any coals, slack, culm, or cannell of every description by measure, and not by weight, shall, on conviction, be liable to a penalty not exceeding 40s. for every such sale.

Sect. 10. From and after the passing of this act, all articles sold by weight shall be sold by avoirdupois weight, except gold, silver, platina, diamonds, or other precious stones, which may be sold by troy weight, and drugs, which, when sold by retail, may be sold by apothecaries' weight.

Sect. 11. And whereas by local customs in markets, towns, and other places throughout the United Kingdom, the denomination of the stone weight varies; be it therefore enacted, That from and after the passing of this act, the weight denominated a stone shall in all cases consist of fourteen standard pounds avoirdupois, and that the weight denominated an hundred weight shall consist of eight such stones, and that the weight denominated a ton shall consist of twenty such hundred weight: Provided always, that nothing herein contained shall prevent any bargain, sale, or contract being made by any multiple or by some aliquot part, such as the half, the quarter, the eighth, or the sixteenth part of the pound weight.

Sect. 12. All weights which shall be made after the passing of this act, of the weight of one pound avoirdupois or more, shall have the number of pounds contained in every such weight stamped or cast on the top or side thereof in legible figures and letters; and that all measures of capacity which shall be made after the passing of this act, shall have their contents denominated, stamped, or marked on the outside of such measures in legible figures and letters.

Sect. 13. And whereas the use of weights made of soft materials

affords facility to fraud ; be it therefore enacted, That from and after the 1st day of January, 1836, no weight made of lead or of pewter, or of any mixture thereof, shall be stamped or used : Provided always, that nothing herein contained shall prevent the use of lead or pewter, or of any mixture thereof, in the manufacture of weights, if they be wholly and substantially cased with brass, copper, or iron, and legibly stamped or marked "cased," or shall prevent the insertion of such a plug of lead or pewter into weights as shall be *bonâ fide* necessary for the purpose of adjusting them and of affixing thereon the stamp hereinafter mentioned.

Sect. 14. And for the purpose of ascertaining and providing for the fulfilment of all existing contracts, and fixing the payments to be made in consequence of such contracts or rents in England and Ireland, payable in grain or malt, or in any other commodity or thing, and in consequence of any toll, rate, or duty heretofore payable according to the weights and measures heretofore in use, where the same shall not have been already ascertained and fixed by agreement between parties, or under the provisions of the said act of the fifth year of his late Majesty, (see 5 Geo. 4, c. 74, s. 17, *ante*, p. 1209,) be it enacted, That at the general or quarter sessions of the peace to be holden in every county, riding, or division, and in every city, town, or place (being a county of itself), in England or Ireland, next after the expiration of three months after the passing of this act, or at any general or quarter sessions of the peace to be holden thereafter, on the application of any party to such sessions, an inquisition shall be taken before the justices assembled at such general or quarter sessions, by the oaths of twelve substantial freeholders of the said respective counties, cities, towns, or places, having lands or tenements, to the value of 100*l.* per annum or upwards, to be summoned by the sheriff or proper officers of every such county, city, town, or place, to inquire into and ascertain the amount, according to the standard of weight or measure by this act established, of all contracts to be performed or rents to be paid in grain or malt, or any other commodity or thing, or with reference to the measure or weight of any such grain, malt, or other commodity or thing, and the amount of any toll, rate, or duty heretofore payable according to any weights and measures heretofore in use within such counties, cities, towns, or places respectively ; and in taking such inquisition, care shall be taken that in every case in which grain, malt, or meal, or any other commodity or thing, having, before the said 1st day of January, 1835, been sold by weight, shall henceforth be sold by measure, or having before the said 1st day of January been sold by measure, shall henceforth be sold by weight, no increase or diminution be made in the amount of any rate, toll, or duty hereafter payable for such grain, malt, or any other commodity or thing, due regard being had to the substitution of measure for weight, or of weight for measure, as the case may be ; and such inquisitions, when taken, shall be transmitted by the respective clerks of the peace of the same counties respectively, or by the mayor, bailiff, or other head officer of every such city, town, or place (being a county of itself,) into his Majesty's Court of Exchequer at Westminster and Dublin respectively, and shall be there inrolled of record, and shall

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5 & 6 Will. 4, c. 63.  
lead or pewter not to be stamped.

For ascertaining certain rents and tolls, &c., payable in England and Ireland (").

Adjustment of at sessions.

(a) This enactment applies only to cases of fixed payments, which cannot be varied by the parties ; and to tolls or rates payable by existing contracts, by immemorial usage, or otherwise, according to the weights and measures in use at the time of passing the act. In such cases the proportions are to be adjusted at the

sessions as pointed out by the above enactment. But the act does not apply to a case where commissioners under an act of parliament have power to vary the tolls, and where they have actually fixed the amount, since the passing of this act. (*Goodry v. Penn*, 9 M. & Wels. 687.)

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5 & 6 Will. 4, c. 63.

Copies of the imperial standards to be provided by order of general or quarter sessions in England, and by meetings of justices in Scotland.

Appointment of inspectors.

Proviso as to Scotland;

as to counties.

22 & 23 Vict. c. 56. Municipal corporations to appoint inspectors of weights and measures.

and may be given in evidence in any action or suit at law or in equity; and the amount so to be ascertained shall, when converted into the standard weights and measures, be the rule of payment in regard to all such contracts, rents, tolls, rates, or duties in all time coming; and the costs and charges of such inquisitions and the inrolments thereof shall be paid and defrayed by the party on whose application such requisition shall be taken.

Sect. 15. Relates to the ascertaining certain rents, tolls, &c., payable in Scotland.

Sect. 16. Contains a regulation as to fair prices of commodities in Scotland.

Sect. 17. In England at the general or quarter sessions of the peace next after the passing of this act, the justices of the peace of every county, riding, or division, or county of a city or county of a town, in general or quarter sessions assembled, and in Scotland the justices of the peace at a meeting to be called for the purpose by the sheriff of each county, and the magistrates of each royal burgh, within three months after the passing of this act, and so from time to time at any subsequent general or quarter sessions, or meeting so called as aforesaid, shall determine the number of copies of the imperial standard weights and measures which they shall deem requisite for the comparison of all weights and measures in use within their respective jurisdictions, and shall direct that such copies, verified and stamped at the exchequer, shall be provided for the use of the same, and shall fix the places at which such copies shall be deposited, and shall appoint a sufficient number of inspectors of weights and measures for the safe custody of such copies, and for the discharge of the other duties hereinafter mentioned, and shall allot to each inspector a separate district, such district to be distinguished by a number or mark, and shall direct what reasonable remuneration shall be paid to such inspectors for the discharge of such duties as they shall have been ordered by such justices or magistrates as aforesaid to perform; and they are hereby empowered to suspend or dismiss any inspector so appointed, or to appoint additional inspectors, as occasion may require: Provided always, that nothing herein contained shall extend to compel any royal burgh of Scotland (except such as are county towns) to provide copies of the imperial standard weights and measures, or to appoint an inspector or inspectors for the performance of the duties prescribed by this act; and that it shall be lawful for the justices of the peace in any county, and for the magistrates of any royal burgh within such county, where they shall agree, to unite the whole or a portion of the county with such royal burgh, and to appoint one inspector therefor, and to provide at their joint expense copies of the imperial standard weights and measures to be used within such united district.

By 22 & 23 Vict. c. 56, s. 4, reciting that doubts had arisen as to the authority by or under which inspectors and examiners of weights and measures in certain municipal boroughs have been heretofore authorised and appointed: it is enacted, That the town councils of all municipal boroughs in England and Wales incorporated under the provisions of the 5 & 6 Will. 4, c. 76, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or any act for the amendment thereof, to which a separate court of quarter sessions has been granted, shall have respectively, and they are hereby authorised and empowered henceforth to use and exercise, solely within their respective boroughs, all and every the powers and authorities concerning weights and measures, and the providing of copies of the imperial standard weights and measures verified and stamped at the exchequer, and the inspection, examination, and seizure of all unjust weights and measures, and the appointment and authorisation of such inspectors and examiners, as are by law now

vested in, used and exercised by, any justices of the peace assembled at their general or quarter sessions in any county in England and Wales, within the limits of their commission, under or by virtue of the 5 & 6 Will. 4, c. 63, intituled "An Act to repeal an Act of the Fifth and Sixth years of His present Majesty, relating to Weights and Measures, and to make other Provisions instead thereof," or under or by virtue of any other law or statute whatsoever; and that such inspectors and examiners so appointed by such town councils as aforesaid, and duly authorised by warrant or other authority in writing under the hand of the mayor of any such borough for the time being, and under the corporate common seal of any such town council as aforesaid, shall have, possess, and exercise the same or the like powers of entering shops, stores, warehouses, manufactories, stalls, yards, and places, within any such borough, and of examining, comparing, trying, and seizing any such weights or measures, as are now had, possessed, or exercised by any inspectors or examiners authorised or appointed in counties by such justices as aforesaid, under or by virtue of the statute lastly hereinbefore referred to, or under or by virtue of any law or statute whatsoever; and all the penal and other provisions of such statute or of any such statutes, so far as they are not repugnant to or inconsistent with this enactment, shall apply to all such boroughs, town councils, inspectors, and examiners respectively, and to all weights and measures used or to be used in such boroughs respectively, and to the examination, comparison, trial, and seizure thereof; and every such council shall and lawfully may pay from time to time to such inspectors and examiners so appointed by them respectively, out of the borough funds or borough rates of such boroughs respectively, such salaries, wages, or allowances as each such council respectively shall deem reasonable, and also out of the same funds or rates shall pay and defray all costs incidental to the providing of the said copies of the imperial standard weights and measures, and of carrying out the said last-mentioned act and this act within such boroughs; and all fees, penalties, and monies which but for this act would have been payable to the county stock or fund shall be paid into and go in aid of the borough fund of such borough: On the exercise of any of such powers by the town council of any such municipal borough, and on written notice under the corporate common seal of such borough being given of the exercise of any of such powers to the clerk of the peace of the county, riding, or division in which such borough shall be situate, and after the expiration of one calendar month from the day on which such notice shall be given or left at the office of the said clerk of the peace, all the powers and authorities of all inspectors or examiners appointed by the justices of the peace at their general quarter sessions of the peace for such county, riding, or division shall, as to such borough, and all weights and measures therein, cease and be absolutely at an end.

By 5 & 6 Will. 4, c. 63, s. 21, in England the justices of the peace in general or quarter sessions assembled, and in Scotland the justices of the peace and magistrates at a meeting called by the sheriff, and in Ireland the grand jury of each county, county of a city, or county of a town, shall provide for the use of the inspectors good and sufficient stamps for the stamping or sealing weights and measures used or to be used in each and every county, riding, or division, county of a city, or county of a town, which stamps so provided shall be taken to be the stamps for such county, riding, or division, county of a city, or county of a town; and that all weights and measures whatsoever, except as hereinafter excepted, which shall be used for buying and selling, or for the collecting of any tolls or duties, or for the making of any charges on the conveyance of any goods or merchandize, shall be examined and compared with one or more of the copies of the imperial standard weights and measures provided under the authority

1. *Different Kinds and Standards, &c.*  
22 & 23 Vict. c. 56.

5 & 6 Will. 4, c. 63. Magistrates in England and Scotland, and grand juries in Ireland, to procure stamps for inspectors, for stamping all weights, &c., under this act.



1. *Different  
Kinds and  
Standards, &c.*

5 & 6 Will. 4, c. 63.

Penalty on using  
weights or mea-  
sures not autho-  
rised by act, &c.

No weight above  
56lbs. to be in-  
spected or  
stamped.

22 & 23 Vict. c. 56.  
Inspectors autho-  
rised to stamp  
measures al-  
though made  
partly of glass, &c.

of this act for the purpose of comparison by such inspectors, who shall stamp, in such manner as best to prevent fraud, such weights and measures when so examined and compared, if found to correspond with the said copies; and the fees for such examination, comparison, and stamping, shall be according to the scale contained in the schedule to this act annexed; and every person who shall use any weight or measure other than those authorised by this act, or some aliquot part thereof as hereinbefore described, or which has not been so stamped as aforesaid, except as hereinafter excepted, or which shall be found light or otherwise unjust, shall, on conviction, forfeit a sum not exceeding 5*l.*; and any contract, bargain, or sale made by any such weights or measures shall be wholly null and void, and every such light or unjust weight and measure so used shall, on being discovered by any inspector so appointed as aforesaid, be seized, and on conviction of the person using or possessing the same shall be forfeited: Provided always, that nothing herein contained shall extend to require any single weight above fifty-six pounds to be inspected and stamped, such weight of fifty-six pounds being the greatest of the imperial standard weights deposited in the exchequer; and that nothing herein contained shall extend to require any wooden or wicker measure used in the sale of lime, or other articles of the like nature, or any glass or earthenware jug or drinking cup, though represented as containing the amount of any imperial measure, or of any multiple thereof, to be stamped; but any person buying by any vessel represented as containing the amount of any imperial measure, or of any multiple thereof, is hereby authorised to require the contents of such vessel to be ascertained by a comparison with a stamped measure, such stamped measure to be found and provided by the person who shall use such wooden or wicker measure, glass, jug or drinking cup as aforesaid; and in case the person who shall use such last-mentioned measure or vessel shall refuse to make such comparison, or if, upon such comparison being made, such wooden or wicker measure, glass, jug or drinking cup, shall be found to be deficient in quantity, the person who shall use the same shall, on conviction, be subject to the forfeitures and penalties hereinbefore imposed on any person using light or unjust weights or measures (*a*).

By 22 & 23 Vict. c. 56, s. 5, reciting that since the passing of the said act measures for liquids had been constructed with a small window or transparent part through which the contents, whether to the brim or to any other index thereof, may be seen without impediment, and the use of such measures by publicans and others in the retail of malt liquors and spirits and other exciseable liquids would be attended with advantage both to the purchaser and seller: it is further enacted, that measures for such liquids which shall correspond in capacity with the standards, or parts or multiples thereof, respectively deposited in the exchequer, although such measures may be made partly of copper or other metal, and partly of glass or other transparent medium, may be examined, compared and stamped by all inspectors of weights and measures, anything in the said recited act to the contrary notwithstanding: That measures for such liquids, the capacity of which shall exceed the standard or parts or multiples of the respective imperial standard measures deposited in the court of exchequer, but which shall have the capacity of such standards or parts or multiples thereof respectively indicated by a level line drawn through the centre of the window or transparent part, although such measures may be made partly of copper or other metal, and partly of glass or other transparent medium, may be examined, compared, and

(*a*) Under this section earthen vessels are liable to seizure when ordinarily used as measures, if on exami-

nation they are found to be unjust. (*Washington v. Young*, 5 *Exch.* 463.)

stamped by all inspectors of weights and measures, anything in the said recited act to the contrary notwithstanding.

5 & 6 Will. 4, c. 63, s. 22. The expense of providing and transmitting such copies of the imperial standard weights and measures, and of the stamps to be used by the inspectors, and the remuneration to the inspectors, shall be paid in England out of the stock raised in such counties, ridings, divisions, or counties of cities; and in Scotland such expenses in the respective shires and stewartries, and cities or royal burghs, shall be assessed by the commissioners of supply upon such shires and stewartries, and upon cities or royal burghs by the magistrates thereof, and shall be paid, along with the land tax payable in such shires or stewartries and cities or royal burghs, to the collectors of the land tax in such shires or stewartries and cities or royal burghs respectively; and in Ireland such expenses in the respective counties, counties of cities, and counties of towns, shall be provided for and paid by presentments to be made by the grand juries on such counties, counties of cities, and counties of towns respectively; and the collectors of land tax in Scotland shall have such and the same powers of levying and recovering the assessments to be made under this act as are competent to them for levying and recovering the said land tax.

Sect. 23. After the passing of this act no maker or seller of weights or measures, or person employed in the making or selling thereof, shall be appointed an inspector of weights and measures under the provisions of this act; and that every inspector shall forthwith enter into a bond or recognizance to the king, to be sued for in any court of record, in the sum of 200*l.*, for the due and punctual performance of the duties of his office, and for the due and punctual payment, at such time or times as he may be directed by the justices, magistrates, or other persons by whom he may have been appointed, of all fees received by him under the authority of this act, and for the safety of the stamps and copies of the imperial standard weights and measures committed to his charge, and for their due restoration and surrender to such person or persons as may be appointed to receive them by the justices, magistrates, or other persons aforesaid, immediately on his removal or other cessation from office.

Sect. 24. In England the justices in general or quarter sessions assembled, and in Scotland the justices or magistrates at a meeting called by the sheriff, and in Ireland the grand jury of each county, county of a city, or county of a town, shall determine and appoint on what day or days each and every such inspector shall attend with the stamps and copies of the imperial standard weights and measures in his custody at each of the several market towns, and at such other places within their respective jurisdictions as they shall deem expedient; and every such inspector so attending shall examine, compare, and stamp if found correct, all such weights and measures as shall be brought to him for that purpose, and shall also upon all measures and upon all weights of a quarter of a pound and upwards stamp a number or mark distinguishing the district in which he acts, and he shall keep a book, wherein he shall enter minutes of all such comparisons, and give, if required, a certificate under his hand of every such stamping; and every inspector shall, once in every quarter of a year, account to the treasurer of the county, riding, division, county of a city, or county of a town, or to such other persons as shall be duly authorised by those by whom he may have been appointed, for all fees received by him under this act, and shall pay the amount thereof to such treasurer or other persons as aforesaid, who shall duly account for the same (a).

1. *Different Kinds and Standards, &c.*

5 & 6 Will. 4, c. 63. Expense of providing copies of standard weights, and the remuneration to inspectors, to be defrayed out of county rate, &c.

No maker or seller of weights or measures to be appointed inspector.

Inspectors to enter into recognizance.

Inspectors to attend at market towns, when ordered by justices, &c.

Inspector to pay fees to treasurer of county, &c.

(a) The inspector appointed by the justices of Middlesex for District No.

1, claimed a right under the words of *this clause*, of stamping all the

1. *Different  
Kinds and  
Standards, &c.*

22 & 23 Vict. c. 56.

Owners of markets to provide beams, scales, &c.

By 22 & 23 Vict. c. 56, s. 6, it shall be lawful for the owners or managers of any public market where goods are exposed or kept for sale, and they are hereby required, to provide proper beams, scales, and balances, and weights and measures, or other machines, for the purpose of weighing or measuring all goods sold, offered, or exposed for sale in any such market, and to deposit the same at the office of the clerk or toll collector of such market, or some other convenient place, and to have the accuracy of all such beams, scales, and balances, and weights and measures, or other machines, tested at least twice in every year by the inspector of weights and measures of and for the county or district where any such market is situate; and all expenses attending the purchase thereof, and for adjusting and testing the same, shall be paid out of the monies collected for tolls in any such market; and such clerk or toll collector shall at all reasonable times, whenever called upon so to do, weigh or measure all goods which shall have been sold, offered, or exposed for sale in any such market, upon payment of such reasonable sum or sums of money as shall from time to time be decided upon by the said owners or managers, subject to the approval and revision of the justices in general or quarter session assembled if such market be in England, or of the sheriff if it be in Scotland.

5 & 6 Will. 4, c. 63.

Power to magistrates of towns, &c., to appoint inspectors (a).

5 & 6 Will. 4, c. 63, s. 25. Provided always, that in the town of Berwick-upon-Tweed and all other places which have been or shall be hereafter authorised under the provisions of any act of parliament, whether local or otherwise, to appoint inspectors or examiners of weights and measures, and in all other places which have been or shall be hereafter by charter, act of parliament, or otherwise, possessed of legal jurisdiction, and which have been or shall be hereafter provided with copies of the imperial standard weights and measures verified and stamped at the exchequer, it shall be lawful for the magistrates of such places, or for any other persons who may be so authorised as aforesaid, to appoint an inspector or inspectors of weights and measures within the limits of their respective jurisdictions; and such inspectors so appointed shall, within such limits exclusively, have the same powers and discharge the same duties as the inspectors of weights and measures appointed under this act by the county justices or grand juries for their respective counties, and shall account as aforesaid to such persons as shall be duly authorised by those by whom they may have been appointed for the amount of the fees received by them: Provided

Powers of such inspectors.

weights in use at the West India Docks; when it was stated by the dock master for the company, that the only set of weights belonging to the company had been stamped, all others used in the dock were the property of the Crown; but it afterwards was admitted by the company that all the weights and measures on their premises belonged to them, but that they lent them to the customs for the use of the Crown; and upon further inquiry it was discovered that these weights and measures were not exclusively used by or for the customs, but were often in use for the general purposes of the company. Upon this, doubts arose on the words of the 21st section,—1st. Whether the West India Dock Company were not liable to the penalty for using weights and measures for their own

particular purpose, although they were found by them for the use of the Crown?—2ndly. Whether also under the same section the inspectors could seize weights and measures without comparison, on the ground of their being unstamped, or whether the power of seizure alone given after comparison and weights or measures found insufficient? Upon these points the opinion of Sir J. Campbell (Attorney-General) was taken; and in answer to the questions, he was of opinion that the circumstance of the weights and measures being found for the use of the Crown, could be no protection to the company for themselves using these weights and measures; and that the seizure is only given after the comparison and proved insufficiency.

(a) See as to counties, sect. 17, ante, p. 1218.

always, that nothing herein contained shall prevent inspectors appointed by county justices or grand juries from coming to any place within the limits of such other jurisdiction or authority as aforesaid, and there inspecting and stamping the weights and measures of any person residing within the district for which such inspectors may have been appointed; but that any inspector knowingly stamping any weight or measure of any person residing within the limits of any local jurisdiction for which another inspector may have been legally appointed as aforesaid shall forfeit a sum not exceeding 20s. for every weight or measure which he may so stamp (a).

Sect. 26. Weighmasters in Ireland are to be supplied with beams and scales, and accurate copies.

Sect. 27. No weight or measure duly stamped by any inspector appointed under the authority of the said act hereby repealed, or this act, or by any other person or persons legally authorised to examine and stamp any weights or measures, shall be liable to be re-stamped, although the same be used in any other place than that at which the same was originally stamped, but shall be considered as a legal weight or measure throughout the United Kingdom, unless found to be defective or unjust.

By the Metric Weights and Measures Act, 1864, 27 & 28 Vict. c. 117, "An Act to render permissive the Use of the Metric System of Weights and Measures," and which recites that it is expedient to legalise the use of the metric system of weights and measures: it is enacted that—

Sect. 2. Notwithstanding anything contained in any act of parliament to the contrary, no contract or dealing shall be deemed to be invalid or open to objection on the ground that the weights or measures expressed or referred to in such contract or dealing are weights or measures of the metric system, or on the ground that decimal subdivisions of legal weights and measures, whether metric or otherwise, are used in such contract or dealing.

Sect. 3. The table in the schedule hereto annexed shall be deemed to set forth, in terms of the weights and measures in force in this country, the equivalents of the weights and measures therein expressed in terms of the metric system, and such table may be lawfully used for computing, determining, and expressing, in weights and measures, weights and measures of the metric system.

1. *Different Kinds and Standards, &c.*

5 & 6 Will. 4, c. 63.

Penalty on inspector knowingly stamping weights, &c., of any person residing out of the district.

Weights and measures once stamped need not be restamped.

27 & 28 Vict. c. 117.

Contracts may be made in terms of the metric system.

Equivalents of metric weights and measures in terms of weights and measures.

(a) An inspector appointed under the provisions of this section is liable to the penalty imposed by the same, as well as any inspector appointed by county justices, for knowingly stamp-

ing weights or measures of a person residing within the local jurisdiction for which another inspector is appointed. (*R. v. Skelton*, 28 *Law J. M. C.* 222.)

1. *Different  
Kinds and  
Standards, &c.*

27 & 28 Vict. c. 117.

SCHEDULE to which this Act refers.

SCHEDULE of TABLES of the Values of the principal Denominations of Measures and Weights on the Metric System expressed by means of the legalized Denominations of Measures and Weights in Great Britain and Ireland.

MEASURES OF LENGTH.

Metric Denominations and Values.		Equivalents in British Denominations.				
—	Metres.	Miles.	Yards.	Feet.	Inches.	Decimals.
Myriametre . . . . .	10,000	{ or	376	0	11·9	
Kilometre . . . . .	1000		1093	0	11·9	
Hectometre . . . . .	100		1093	1	10·79	
Dekametre . . . . .	10		109	1	1·079	
Metre . . . . .	1		10	2	9·7079	
Decimetre . . . . .	$\frac{1}{10}$		1	0	3·3708	
Centimetre . . . . .	$\frac{1}{100}$				3·9371	
Millimetre . . . . .	$\frac{1}{1000}$				0·3937	
					0·0594	

MEASURES OF SURFACE.

Metric Denominations and Values.		Equivalents in British Denominations.		
—	Square Metres.	Acres.	Square Yards.	Decimals.
Hectare, i.e. 100 Ares . . . . .	10,000	{ or	2	2280·3326
Dekare, i.e. 10 Ares . . . . .	1,000			11,960·3326
Are . . . . .	100			1196·0333
Centiare, i.e. $\frac{1}{100}$ Are . . . . .	1			119·6033
				1·1960

MEASURES OF CAPACITY.

Metric Denominations and Values.		Equivalents in British Denominations.					
—	Cubic Metres.	Quartars.	Bushels.	Pecks.	Gallons.	Quarts.	Pints. Decimals.
Kilolitre, i.e. 1000 Litres . . . . .	1	3	3	2	0	0	0·77
Hectolitre, i.e. 100 Litres . . . . .	$\frac{1}{10}$		12	3	0	0	0·077
Dekalitre, i.e. 10 Litres . . . . .	$\frac{1}{100}$			1	0	0	1·6077
Litre . . . . .	$\frac{1}{1000}$						1·76077
Decilitre, i.e. $\frac{1}{10}$ Litre . . . . .	$\frac{1}{10000}$						0·176077
Centilitre, i.e. $\frac{1}{100}$ Litre . . . . .	$\frac{1}{100000}$						0·0176077

## WEIGHTS.

1. *Different Kinds and Standards, &c.*

Metric Denominations and Values.		Equivalents in British Denominations.					
—	Grams.	Cwts.	Stones.	Pounds.	Ounces.	Drams.	Decimals.
Millier . . . . .	1,000,000	19	5	6	9	15	04
Quintal . . . . .	100,000	1	7	10	7	6	304
Myriagram . . . . .	10,000		1	8	0	11	8304
Kilogram . . . . .	1000	{ (or 15432.3487 grains)				4	3830
Hectogram . . . . .	100				3	8	4383
Dekagram . . . . .	10					5	0438
Gram . . . . .	1					0	50438
Decigram . . . . .	$\frac{1}{10}$					0	050438
Centigram . . . . .	$\frac{1}{100}$					0	0050438
Milligram . . . . .	$\frac{1}{1000}$					0	00050438

## II. Examination of Weights, &c., and Penalties, &c., for having defective ones. Recovery, &c., of Penalties. Fees of Inspectors. Limitation of Actions, &c.

The selling by false weights or measures is an offence at the common law, and may be punished by indictment, fine, and imprisonment, (*ante*, "Cheat.")

Selling by false weights offence at common law.

By 22 & 23 Vict. c. 56, s. 2, no person shall wilfully or knowingly make or sell, or cause to be made or sold, any false or unjust beam, scale, or balance, or any light or unjust weight or measure; and every person who shall commit any such offence shall upon being convicted thereof forfeit and pay any sum not exceeding 10*l.* as shall be adjudged by the justice, sheriff, or magistrate before whom any such conviction shall take place.

Penalty for making and selling false beams and scales or weights and measures.

The court leet have jurisdiction to inquire into weights and measures within its jurisdiction. (See "*Leet*.") But the leet jury cannot in general enter shops, &c., to examine weights, &c.; the party must be proceeded against by summons. (*And*. 48.) There may, however, be a custom in the manor to make such entry, and then it will be lawful, and the custom may also extend for the jury to break and destroy weights and measures; and it would be a lawful custom. (*Willcock v. Windsor*, 3 B. & Ad. 43.)

Power of leet jury, &c., over.

The 5 & 6 Will. 4, c. 63, s. 45, and 22 & 23 Vict. c. 56, s. 10, *post*, p. 1233, expressly reserve the powers of leet juries as to the examination, &c., of weights, &c., and the existence of such powers is recognised by the 3 & 4 Vict. c. 84, s. 12, which gives the right of appeal to persons thinking themselves aggrieved by any presentment or proceeding of any leet jury, or court leet, for any hundred or manor within the metropolitan police district, or of any person appointed at such court leet, with respect to examining or regulating, seizing, breaking, or destroying any weights, balances, or measures. (See the enactment, title "*Leet*.")

The statutes now in force relative to the examination of *weights* and *measures*, and inflicting penalties and forfeitures on persons having improper ones, or obstructing the examination by inspectors, are the 29 Geo. 2, c. 25, and 31 Geo. 2, c. 17, which are in operation in the city and liberty of Westminster only, and the general act of 5 & 6 Will. 4, c. 63. The 35 Geo. 3, c. 102, 37 Geo. 3, c. 143, and 55 Geo.

Statutes as to examination of weights and measures.

2. *Examination, &c., of Penalties, &c.* 3, c. 43, recognised by 5 Geo. 4, c. 74, are now, it would seem, virtually repealed by the 5 & 6 Will. 4, c. 63.

29 Geo. 2, c. 25.  
In Westminster.  
Duty of the jury with respect to weights and measures.

By 29 Geo. 2, c. 25, s. 14, "*for preventing persons dealing by unlawful weights, balances, or measures within the said city or liberty of Westminster,*" it is enacted, "That the said annoyance jury shall and are hereby authorised and impowered, at all seasonable times in the day time, to enter into any shop, house or warehouse, within the said city and liberty, belonging to any person or persons that deal by weight or measure; and if the said jury shall find any weight, balance or measure, to be unlawful or defective, it shall and may be lawful to and for the said jury, and they are hereby directed and required, to break and destroy the same, and to amerce the person or persons so offending, in such sum or sums of money as they shall think proper, according to the nature of the offence, not exceeding 40s. for any one offence.

31 Geo. 2, c. 17.  
Weights and measures to be sized, sealed, and marked by the proper officer.

Also by 31 Geo. 2, c. 17, s. 9, reciting, "that by the said recited act the said annoyance jury are empowered to destroy all unlawful weights, balances, and measures, of persons dealing by weight or measure within the limits aforesaid; and that a doubt had arisen upon the construction of such part of the said act as relates thereto; for obviating whereof," it is enacted "that all weights and measures made use of by persons dealing by weight or measure, within the said city and liberty, shall be sized and sealed by the standards belonging to the said city, and also marked with a portcullis by the officer already appointed for that purpose, or by such other officer as may hereafter be appointed by the said dean, high steward, or his deputy, the two chief burgesses, and the other burgesses, of Westminster, or any five or more of them, whereof the said dean, high steward, or his deputy always to be one, at a court to be held for that purpose, (and by no other person or persons whatsoever), which officer appointed or to be appointed is hereby required upon application to him made for that purpose, to seal, and mark, in manner aforesaid, all weights and measures which shall be brought to him for that purpose, and which shall be agreeable to the standards belonging to the said city; and the said officer shall demand and receive, for each weight and measure so by him sealed and marked, as aforesaid, for his pains and trouble therein, the fees following, and no more; that is to say, for every bushel, 4d.; for every half bushel, 2d.; for every peck, half peck, and quarter peck, 1d.; for all half pecks, or quarter pecks, per dozen, 10d.; and for every sack, 2d.; for every ale and beer measure  $\frac{1}{2}$ d.; for every hundred weight, 4d.; for every half hundred weight, 2d.; for all pound weights, and all other weights under half a hundred weight,  $\frac{1}{2}$ d.; for all ounce weights, and all other weights under a pound,  $\frac{1}{4}$ d.; and all weights and measures belonging to persons dealing by weight or measure within the said city and liberty, which shall not be sealed and marked in manner before directed, shall be deemed unlawful; and it shall and may be lawful for the said annoyance jury, or any twelve or more of them, and they are hereby authorised and required to destroy all such unlawful weights and measures, and to amerce the owner or owners thereof, or the person in whose possession the same shall be found, in any sum or sums of money not exceeding 40s. for any one offence.

Officers' fees for sealing and marking the same.

Unsealed weights and measures may be destroyed as unlawful,

and the owners amerced in a sum not exceeding 40s.

Sealing officer to pay half yearly to the deputy steward a moiety of his profits.

Sect. 10 also enacts, That the officer already appointed, or hereafter to be appointed as aforesaid, after all necessary charges and expenses attending the sizing, sealing, and marking such weights and measures as aforesaid, shall have been first deducted, shall, and he is hereby directed and required half-yearly, within one calendar month next after the 25th day of March, and the 29th day of September, in every year, to pay or cause to be paid to the deputy steward of Westminster for the time being, on account of his trouble and expense in attending

his office of deputy steward of Westminster, one moiety of the clear money arising from or on account of such sizing, sealing, and marking as aforesaid. 2. Examination, &c., of Penalties, &c.

By 5 & 6 Will. 4, c. 63, s. 28, in England and Ireland it shall be lawful for every justice of the peace of any county, riding, or division, or of any city or town, and in Scotland for every sheriff, justice, or magistrate of any borough or town, or for any inspector (authorised in writing under the hand of any justice of the peace in England and Ireland), or of any sheriff, justice, or magistrate in Scotland, at all reasonable times to enter any shop, store, warehouse, stall, yard, or place whatsoever *within his jurisdiction* (a), wherein goods shall be exposed or kept for sale, or shall be weighed for conveyance or carriage, and there to examine all *weights, measures, steelyards, or other weighing machines*, and to compare and try the same with the copies of the imperial standard weights and measures required or authorised to be provided under this act; and if upon such examination it shall appear that the said weights or measures are light or otherwise unjust (b), the same shall be liable to be seized and forfeited; and the person or persons in whose possession the same shall be found shall, on conviction, forfeit a sum not exceeding 5*l.*; and any person who shall have in his or her possession a steelyard or other weighing machine which shall on such examination be found incorrect or otherwise unjust, or who shall neglect or refuse to produce for such examination, when thereto required, all weights, measures, steelyards, or other weighing machines which shall be in his or her possession, or shall otherwise obstruct or hinder such examination, shall be liable to a like penalty. 5 & 6 Will. 4. c. 63.  
In general.  
Power to justices and inspectors to enter shops and inspect weights and measures (a).  
False weights forfeited.  
Penalty.  
Refusal to produce for or obstructing examination.

By 22 & 23 Vict. c. 56, s. 3, it shall be lawful for every inspector of weights and measures, or other person or persons duly appointed to inspect weights and measures, at all reasonable times to inspect all beams, scales, and balances, and weights and measures, in the possession of any person selling, offering, or exposing for sale any goods on any open ground, or in any public street, lane, thoroughfare, or other open place; and if upon such inspection or examination any 22 & 23 Vict. c. 56.  
Power to inspectors to inspect beams, scales, &c. in possession of persons selling in the public streets.

(a) *Per Parke B.*, in *Hutchinson v. Reeves*, 9 *M. & W.* 755. "This term is to be referred to all persons, the persons previously mentioned, that is, the sheriff may enter within his jurisdiction, the justice may enter within his jurisdiction, the magistrate for the borough or town may enter within his jurisdiction, and persons authorised in writing by the justice, &c. (although the use of the term *jurisdiction* is not very proper with reference to an inspector, who does not act judicially, and who has not, properly speaking, jurisdiction), have thereby a general authority at all reasonable times to enter into all shops, &c., within the limits of the authority so given to them, for the purpose of ascertaining whether the weights and measures are correct. It seems to me, therefore, that whatever authority the justice has, a person authorised by him in writing must have; and that being a general authority to enter at all reasonable times, it follows, that he may, in a general form,

transfer the same authority to the inspector."—"It appears to me, that it was not intended, that there should be a particular warrant on each occasion; but that every inspector who has been appointed at the quarter sessions, and who is thought a trustworthy person, may be authorised by any justice within the limits of his jurisdiction to make a search whenever at seasonable times he thinks the interest of the public requires such search to be made." No information or complaint is necessary before granting such warrant. (*Id.*)

(b) A railway company having a weighing machine which had been out of repair for a fortnight, so that thereby the weight of anything appeared to be four pounds more than its true weight, was held liable to conviction under this section, for having in possession a weighing machine which on examination appeared unjust. (*The Great Western Railway Company v. Bailey*, 34 *Law J. M. C.* 31.)



2. *Examination,  
&c., of Penalties,  
&c.*

22 & 23 Vict. c. 56.

such beams, scales, or balances, or weights or measures, shall be found light or unjust, or otherwise contrary to the provisions of this act or the hereinbefore recited act, or if any fraud be wilfully committed in the using thereof, the same shall be liable to be seized and forfeited, and the person or persons using or having in his or her possession any such false or unjust beams, scales, or balances, or light or unjust weights or measures, shall be liable to any penalty not exceeding 5*l*.

Power to clerks of markets to inspect goods sold, &c., and if weighing found deficient to summon the offender.

By sect. 7, it shall be lawful for every clerk or toll collector of any public market, at all reasonable times, to weigh or measure all goods sold, offered, or exposed for sale in any such market; and if upon such weighing or measuring any such goods shall be found deficient in weight or measure, or otherwise contrary to the provisions of this act or the hereinbefore recited act, every such clerk or toll collector is hereby authorised and required to summon the person selling, offering, or exposing for sale, or causing to be sold, offered, or exposed for sale, any such goods before any justice, sheriff, or magistrate having jurisdiction in the county or district where any such market is situate; and every such justice, sheriff, or magistrate shall, upon proof thereof, convict the offender or offenders in the respective penalties by this act or the said recited act imposed, and shall from time to time award to any such clerk or toll collector such reasonable remuneration (to be paid out of the said penalties), as to him shall seem fit.

5 & 6 Will. 4. c. 63.

Penalty on inspector for neglect of duty or for misconduct.

By 5 & 6 Will. 4. c. 63, s. 29, in case any inspector of weights and measures, or any other person legally authorised to examine and stamp any weights or measures, shall stamp any weight or measure without duly verifying the same by comparison with a copy of the imperial standard, or shall be guilty of a breach of any duty imposed upon him by this act, or shall otherwise misconduct himself in the execution of his office, every such offender shall upon conviction, forfeit a sum not exceeding 5*l*. for every such offence.

Penalty for counterfeiting stamps on weights and measures.

\* *Sic*.

Sect. 30. If any person or persons shall make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, or knowingly act or assist in the making, forging, or counterfeiting, any stamp or mark now used or which may hereafter be used for the stamping or marking of any weights or measures under this act\*, shall for every such offence forfeit, on conviction, a sum not exceeding 50*l*. or less than 10*l*.; and if any person shall knowingly sell, utter, dispose of, or expose to sale any weight or measure with such forged or counterfeit stamp or mark thereon, every person so offending shall for every such offence forfeit, on conviction, a sum not exceeding 10*l*. or less than 40*s*.; and that all weights and measures with such forged or counterfeited stamps or marks shall be forfeited and broken up, and the proceeds thereof shall be disposed of in the manner hereinafter mentioned.

Penalty on price lists, &c., denoting greater or less weight or measure than the same denomination of imperial weight or measure.

Sect. 31. From and after the 1st day of January, 1836, if any person or persons shall print, or if the clerk of any market or other person shall make any return, price list, price current, or any journal or other paper containing price list or price current, in which the denomination of weights and measures quoted or referred to shall denote or imply a greater or less weight or measure than is denoted or implied by the same denomination of the imperial weights and measures under and according to the provisions of this act, such person or persons or clerk of the market shall forfeit and pay any sum not exceeding 10*s*. for every copy of every such return, price list, price current, journal or other paper which he or they shall publish.

Recovery of penalties in England and Ireland.

Sect. 32. All penalties and forfeitures which shall be incurred under any of the provisions of the said recited act of the fifth year aforesaid, or this act, after deducting so much thereof, not exceeding a moiety, to be paid to the party on whose information the conviction shall take

place, as the justice before whom the party is convicted shall think fit, shall be paid to the treasurer of such county, riding, or division, county of a city, corporate town, or other place in which they shall be respectively recovered, or to such other person as shall be duly authorised to receive the same, and be applied to and make part of the county stock, or of such other funds as shall be liable, under the provisions of this or any other act, to the cost of providing and maintaining copies of the imperial standard weights and measures; anything in the said recited act of the fifth year aforesaid to the contrary notwithstanding. (And see sect. 8 of 22 & 23 Vict. c. 56, as to penalties, *infra*.)

2. *Examination, &c., of Penalties, &c.*

5 & 6 Will. 4. c. 63.

Sect. 33. In all counties, ridings, or divisions in England and Ireland, all penalties and forfeitures under this act shall be sued for before two or more justices of the peace at petty sessions; or before the mayor or other chief magistrate of any city, borough, town, or place within whose jurisdiction the offence shall have been committed; and that the conviction may be drawn up according to the following form, or in words to the like effect:

Suing for penalties.

"Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, A. B. is convicted before us, two of his Majesty's justices of the peace [or 'before me \_\_\_\_\_ the mayor' or 'chief magistrate of the city, borough, &c., of \_\_\_\_\_'] for the [here specify the offence, and the time and place when and where committed, as the case may be], contrary to an act passed in the year of the reign of king William the Fourth, intituled, &c. [as the case may be]; and we [or 'I'] do adjudge that the said A. B. hath forfeited for his [or 'her'] said offence the sum of [here insert the penalty]. Given under our hands and seals [or 'my hand and seal'] the day and year first above written."

Form of conviction.

By 22 & 23 Vict. c. 56, s. 8, for every offence against or disobedience to the provisions of this act or the hereinbefore recited act for which no special penalty is provided, the offender shall, at the discretion of the justice, sheriff, or magistrate before whom any such conviction shall take place, be liable to any penalty not exceeding 5*l*. as shall be adjudged by such justice, sheriff, or magistrate.

22 & 23 Vict. c. 56. Penalties.

By 5 & 6 Will. 4, c. 63, s. 34, in England and Ireland all penalties and forfeitures inflicted or imposed by this act may, in case of non-payment thereof, be recovered in a summary way by the order and adjudication of two or more justices of the peace at petty sessions, or before the mayor or other chief magistrate of any borough, city, town, or place within whose jurisdiction the offence shall have been committed, on complaint to them or him for that purpose made, and afterwards be levied, as well as the costs (if any) of such proceedings, on non-payment by distress and sale of the goods and chattels of the respective offenders, by warrant under the hands and seals of such justices, or hand and seal of such mayor or other chief magistrate, who is and are hereby authorised and required to summon and examine any witnesses of or concerning such offence, and to hear and determine the same: and the overplus (if any) of the money so raised or recovered, after discharging such penalties or forfeitures, and the costs and expenses as aforesaid, shall be returned, on demand, to the respective owners of the goods and chattels so seized and distrained; and in case any such penalty or forfeiture shall not be forthwith paid, it shall be lawful for the said justices, mayor, or other chief magistrate, to order any offender so convicted to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such offender can give sufficient security, to the satisfaction of such justices, mayor, or other chief officer, for his or her appearance before the said justices, or before some other justices having jurisdiction, or before such mayor or other chief magistrate, on such day as shall be appointed for the return of such warrant, such day not

5 & 6 Will. 4, c. 63. Mode of recovery of penalties.

By distress, &c.

2. *Examination,  
&c., of Penalties,  
&c.*

5 & 6 Will. 4, c. 63.

If not sufficient  
distress, offender  
to be committed  
to common gaol,  
&c.

being later than eight days from the day of taking any such security, and which security any such justices, mayor, or other chief magistrate are and is hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant it shall appear that no sufficient distress can be had whereupon to levy the said penalty or forfeiture and costs and expenses aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of any such justices, mayor, or other chief magistrate, upon the confession of the offender or otherwise, that he or she hath not sufficient goods and chattels whereupon such penalty or forfeiture, costs and expenses, could be levied if a warrant of distress were issued, such justices, mayor, or other chief magistrate, shall not be required to issue such warrant, but in such case such justices, mayor, or other chief magistrate is hereby required, by warrant under their hands and seals or his hand and seal, to commit such offender to some common gaol or house of correction for the county, city, borough, town, or place, there to remain without bail or mainprize for any time not exceeding two calendar months, or until such offender shall have paid such penalty or forfeiture, and all costs and charges attending the proceedings, (to be ascertained by such justices, mayor, or other chief magistrate,) or shall otherwise be discharged by due course of law.—(See "*Commitment in Execution.*")

Appeal.

Sect. 35. In England and Ireland all persons who may think themselves aggrieved by any order, judgment, or determination of any justice of the peace, mayor, or chief magistrate, relating to any matter or thing in this act mentioned or contained, may, within fourteen days next after such order, judgment, or determination shall have been made or given, appeal to the justices of the peace at the then next ensuing general or quarter sessions to be held for the city, borough, or county within which the alleged cause of appeal shall arise, first giving seven days' notice in writing of such intention to appeal, and the grounds and nature thereof, to the party against whom such complaint is intended to be made, and forthwith after such notice entering into a recognizance before some justice of the peace, mayor, or other chief magistrate, with two sufficient sureties, conditioned to try such appeal, and abide the order and award of the said court thereon; and the said justices shall either hear and determine the said complaint at such general or quarter sessions, or, if they think proper, shall adjourn the hearing thereof to the following general or quarter sessions of the peace to be held for such city, borough, or county; and the said justices may, if they see cause, mitigate any penalty or forfeiture, and may order any money to be returned which may have been levied in pursuance of such order or determination, and may also order any such further satisfaction to be made to the party injured as they shall judge reasonable, and may also order such costs to be paid to the party aggrieved by the party aggressing as they shall think reasonable.—(See in general, title "*Appeal.*")

Proceedings not  
to be quashed for  
want of form.  
Certiorari.

Sect. 36. No proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form, or be removed by *certiorari*, or by any other writ or proceeding whatsoever, into any of his Majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary notwithstanding.

Penalties in Scot-  
land.

Sects. 37 & 38 relate to the recovery of penalties in Scotland and to appeals against sentences there.

Limitation of ac-  
tions.

Venue.

General issue.

Sect. 39. In all actions brought against any person for any thing done in pursuance of this act, or in the execution of the powers or authorities thereof, such action shall be laid and brought in the county within which the cause of action shall have arisen; and the defendant or defendants in such action may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the acts were done in pursuance or by the

authority of this act; and if they shall appear to have been so done, or that such action shall have been brought otherwise than as hereinbefore directed, then and in every such case the jury shall find for the defendant or defendants; upon which verdict, or if the plaintiff or plaintiffs shall become nonsuited, or shall suffer a discontinuance of his, her, or their action after the defendant or defendants shall have appeared thereto, or if a verdict shall pass against the plaintiff or plaintiffs therein, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have his, her, or their costs, and shall have such remedy for recovering the same as defendants have for recovering costs of suit by law in any other cases.

2. *Examination, &c., of Penalties, &c.*

5 & 6 Will. c. 63.

Costs.

Sect. 40. No plaintiff shall recover in any action for any irregularity, trespass, or other wrongful proceeding made or committed in the execution of this act, if tender of sufficient amends shall have been made by or on behalf of the party or parties who shall commit such irregularity, trespass, or other wrongful proceeding, before such action brought; and in case no tender shall have been made, it shall be lawful for the defendant or defendants in any such action, by leave of the court wherein such action shall depend, at any time before issue joined, to pay into court such sum or sums of money as he, she, or they shall think fit, whereupon proceedings, order, and adjudication shall be had and made in and by such court as in other actions where defendants are allowed to pay money into court.

Plaintiff not to recover after tender of amends.

### SCHEDULE OF FEES

*To be taken by all Inspectors of Weights and Measures appointed under the Authority of this Act.*

Fees to be taken by inspectors.

*For examining, comparing, and stamping all brass weights, within their respective jurisdictions :*

	s.	d.
Each half hundred weight . . . . .	0	9
Each quarter of a hundred weight . . . . .	0	6
Each stone . . . . .	0	4
Each weight under a stone to a pound inclusive . . . . .	0	1
Each weight under a pound . . . . .	0	0½
Each set of weights of a pound and under . . . . .	0	2

*For examining, comparing, and stamping all iron weights, or weights of other descriptions not made of brass, within their respective jurisdictions :*

	s.	d.
Each half hundred weight . . . . .	0	3
Each quarter of a hundred weight . . . . .	0	2
Each stone . . . . .	0	1
Each weight under a stone . . . . .	0	0½
Each set of weights of a pound and under . . . . .	0	2

*For examining, comparing, and stamping all wooden measures, within their respective jurisdictions :*

	s.	d.
Each bushel . . . . .	0	3
Each half bushel . . . . .	0	2
Each peck, and all under . . . . .	0	1
Each yard . . . . .	0	0½

2. *Examination, &c., of Penalties, &c.*

*For examining, comparing, and stamping all measures of capacity of liquids made of copper or other metal, within their respective jurisdictions :*

& 6 Will. 4, c. 63.

	s.	d.
<i>Each five gallon</i> . . . . .	1	0
<i>Each four gallon</i> . . . . .	0	9
<i>Each three gallon</i> . . . . .	0	6
<i>Each two gallon</i> . . . . .	0	4
<i>Each gallon</i> . . . . .	0	2
<i>Each half gallon</i> . . . . .	0	1
<i>Each quart, and under</i> . . . . .	0	0½

### III. Repeal of Acts, and General Clauses of the 5 Geo. 4, c. 74, and 5 & 6 Will. 4, c. 63; Reservation of Rights, &c.

5 Geo. 4, c. 74.

Regulations and penalties of British acts.

By the 5 Geo. 4, c. 74, s. 21, all the powers, rules, and regulations in force, and contained in the several acts hereinafter mentioned, specified, and set forth, for the ascertaining, examining, seizing, breaking, and destroying any weights, balances, or measures, shall be applied and put in execution in Great Britain for the ascertaining and examining, and for the seizing, breaking, and destroying of any weights or measures not conformable to the standard weights and measures ascertained and authorised by this act, and for the punishment of any person or persons having any defective weight or measure, not conformable to the said standard weights and measures (a): that is to say, in 29 Geo. 2, c. 25, and in 31 Geo. 2, c. 17, for explaining, amending, and rendering more effectual the said last mentioned act; and in 35 Geo. 3, c. 102, and in 37 Geo. 3, c. 143, for explaining and amending the said last mentioned act; and in 55 Geo. 3, c. 43. And all the powers, rules, regulations, provisions, penalties, and forfeitures in the said several acts contained, shall be applied and put in execution as if the weights or measures ascertained by this act had been specified in the said recited acts respectively, and as if all such powers, rules, regulations, provisions, penalties, and forfeitures, and modes of recovery thereof, were repeated and re-enacted in this act, except only so far as the said recited acts, or any of them, or any part thereof, are expressly repealed or altered by this act, or any other act or acts.

Sect. 22. The regulations and penalties of the Irish acts, viz., 4 Anne, (I.); 11 Geo. 2, (I.); 25 Geo. 2, (I.); 27 Geo. 3, (I.); 28 Geo. 3, (I.), shall be applied to this act.

Sect. 23 repeals so much of former statutes, ordinances, or acts, as relate to establishing weights or measures; that is to say, certain ancient statutes or ordinances made previous to the reign of king Edward the Third; but being of uncertain date, and a large number enumerated commencing with 14 Edw. 3, st. 1, c. 12, and ending with 43 Geo. 3, c. 69, saving so far as the same repeal former acts.

Sect. 24. Provided that nothing in this act contained shall extend, or be construed to extend, to repeal the hereinbefore recited act of 31 Geo. 2, c. 17, which empowers the dean and high steward of Westminster, &c., to appoint a proper officer to size and seal weights and measures.

5 & 6 Will. 4, c. 63, s. 41 repeals 4 Anne (I.), and 5 Geo. 4, c. 110, except so far as they relate to duties, &c., of weighmasters.

(a) The 11 Hen. 7, c. 4, s. 3, is not expressly repealed; but not being noticed in this clause of the 5 Geo. 4,

c. 74, it may be questionable whether it is not virtually so.

Sect. 42 provides that the powers of ward inquests in London, Southwark, &c., are not to be interfered with.

Sect. 43. Provided always, that nothing in this act contained shall extend to prohibit, defeat, injure, or lessen the rights granted by charter to the master, wardens, and commonalty of the mystery of founders of the city of London.

Sect. 44. Provided always, that nothing in this act contained shall extend to prohibit, defeat, injure, or lessen the rights or privileges of either of the universities of Oxford or Cambridge, but that the custody of the assize, assay, and overlooking of weights and measures in the city of Oxford and its suburbs, and in the town of Cambridge, shall continue as heretofore and be in the chancellor, vice-chancellor, or his deputy, of the said universities respectively; and that the chancellor, vice-chancellor, or his deputy, of each of the said universities for the time being, and none other, shall have the power, and is or are hereby authorised, as occasion may require, to appoint in and for the said city and suburbs, and in and for the said town respectively, an inspector or inspectors of weights and measures, and shall have full power and authority to perform and execute all such matters and things as are required or are granted to justices of the peace of any county, city, town, or other jurisdiction in England and Wales, under the provisions of this act, or by any or either of the said recited acts; and every such inspector is hereby authorised and empowered to put in force and execute all such powers and provisions as are by this act, or by any or either of the said recited acts, granted to or required of any inspector or inspectors of weights and measures appointed as aforesaid by the justices of the peace in quarter sessions assembled. (Sect. 11 of 22 & 23 Vict. c. 56, continues the same powers.)

Sect. 45. Provided always, that nothing in this act contained shall extend or be construed to extend to supersede, limit, take away, lessen, or prevent the authority which any person or persons, bodies politic or corporate, or any person appointed at any court leet for any hundred or manor, or any jury or ward inquest, may have or possess for the examining, regulating, seizing, breaking, or destroying any weights, balances, or measures within their respective jurisdictions, or the power given by any act or acts now in force to justices or other authorities to appoint examiners for the inspection of weights and measures. (See *ante*, p. 1225, and "*Leet*.") This provision is also re-enacted by sect. 10 of 22 & 23 Vict. c. 56.

3. *Repeal of acts and general clauses.*

5 & 6 Will. 4, c. 63. Rights of Founders' Company reserved.

Saving the rights of universities of Oxford and Cambridge.

Not to abridge the power of the leet jury, &c.:

or the power given by any act for justices to appoint examiners.

#### IV. Forms.

\_\_\_\_\_ } To A. B., inspector of weights and measures for the district of (1.) Warrant to  
, and to all others whom it may concern. inspectors to enter  
shops, &c., to inspect, &c.

Whereas you the said A. B. have been duly appointed, and now are an inspector of weights and measures for the district of \_\_\_\_\_, in the said county of \_\_\_\_\_: now I, J. P., one of her Majesty's justices of the peace in and for the said county, in pursuance of the statute in such case made and provided, do hereby authorise you the said A. B., as such inspector as aforesaid, at all seasonable times to enter any shop, store, warehouse, stall, yard, or place whatsoever, within your district and jurisdiction, wherein goods shall be exposed or kept for sale, or shall be weighed for conveyance or carriage, and there to examine all weights, measures, steelyards, or other weighing machines, and to compare and try the same with the copies of the imperial standard weights and measures required and authorised to be provided under the statute in such case made and provided, and for your so doing this shall be your sufficient warrant and authority. Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 1843.

J. P.

The 5 & 6 Will. 4, c. 63, s. 33, *ante*, p. 1229, gives a general form of the conviction.

## Whipping, Punishment of.

1 Geo. 4, c. 57.

Sentence of whipping not awarded on female offenders.

Instead thereof, imprisonment or solitary confinement.

Proviso for former laws, except the said punishment.

Discharging fire-arms, &c., at the Queen.

25 Vict. c. 13.

Juvenile offenders.

Whipping for certain offences with violence.

THE 1 Geo. 4, c. 57, s. 1, repeals the 57 Geo. 3, c. 75.

Sect. 2. From and after the passing of this act, judgment or sentence shall in no case whatever be given and awarded against any female or females convicted of any offence whatsoever, that such female offender or offenders do suffer the punishment of being whipped, either publicly or privately; any law, statute, or usage to the contrary notwithstanding.

Sect. 3. In all cases where the punishment of whipping, either publicly or privately, on female offenders, has hitherto formed the whole or part of the judgment or sentence to be pronounced, or has in any other case been inflicted, it shall and may be lawful for the court or justice of the peace before whom any such offender shall be tried or convicted, to pass sentence of confinement to hard labour in the common gaol or house of correction, for any space of time not exceeding six months, nor less than one month; or of solitary confinement therein for any space not exceeding the space of seven days at any one time, in lieu of the sentence of being publicly or privately whipped, as to the said court or justice shall seem most proper: Provided that nothing herein contained shall extend, or be construed to extend, in any manner to change, alter, or affect any punishment whatsoever, which may now be by law inflicted in respect of any offence, save and except only the punishment of publicly or privately whipping on female offenders in manner as hereinbefore is enacted.

By the 5 & 6 Vict. c. 51, s. 2, persons discharging or aiming fire arms, &c. at the Queen, may be punished by whipping, &c.

By 25 Vict. c. 13, "An Act to amend the Law as to the Whipping of Juvenile and other Offenders," it is enacted that,

Sect. 1. Where the punishment of whipping is awarded for any offence by order of one or more justice or justices, made in exercise of his or their power of summary conviction, or in Scotland by the court of justiciary or by any sheriff or magistrate, the order, sentence, or conviction awarding such punishment shall specify the number of strokes to be inflicted and the instrument to be used in the infliction of them, and in the case of an offender whose age does not exceed fourteen years, the number of strokes inflicted shall not exceed twelve, and the instrument used shall be a birch rod.

By sect. 2, no offender shall be whipped more than once for the same offence.

The following provision is contained in the statutes consolidating the law of offences, of malicious injury to property, of larceny, and against the person, being respectively, cc. 97, 96, 100, of 24 & 25 Vict.

"Whenever whipping may be awarded for any offence under this act, the court may sentence the offender to be once privately whipped, and the number of strokes and the instrument with which they shall be inflicted shall be specified by the court in the sentence."

26 & 27 Vict. c. 44.

And by 26 & 27 Vict. c. 44, it is provided as to the punishments imposed for offences under sect. 43, of c. 96, for robbery with violence, and under sect. 21 of c. 100, for garotte offences, that as the same are insufficient,

Sect. 1. Where any person is convicted of a crime under either of the said sections, the court before whom he is convicted may, in addition to the punishment awarded by the said sections or any part thereof, direct that the offender, if a male, be once, twice, or thrice privately whipped, subject to the following provisions:

1. That in the case of an offender whose age does not exceed sixteen years, the number of strokes at each such whipping do not exceed twenty-five, and the instrument used shall be a birch rod.
2. That in the case of any other male offender, the number of strokes do not exceed fifty at each such whipping.
3. That in each case the court in its sentence shall specify the number of strokes to be inflicted and the instrument to be used.

Provided that in no case shall such whipping take place after the expiration of six months from the passing of the sentence, provided also that every such whipping to be inflicted on any person sentenced to penal servitude shall be inflicted on him before he shall be removed to a convict prison with a view to his undergoing his sentence of penal servitude.

## Wife.

A WIFE, or *feme covert*, is so much favoured in respect of that power and authority which her husband has over her, that, in general, if a felony be committed by her in company with or in the presence of her husband, the presumption of law is, that she acted under his immediate coercion, and she will be excused from punishment. (1 *Hawk. c. 1, s. 2*; 1 *Hawk. c. 1, s. 1*.) Thus a woman who went from shop to shop uttering base coin, her husband accompanying her each time to the door, but not going in, was holden by *Bayley, J.*, to be under her husband's coercion. (*MS. Durham Spring Ass. 1829; Matthew's Dig. 262.*)

Committing offences with husband.

But if she commit a crime of her own voluntary act, or by the bare command of her husband in his absence, or be guilty of treason, murder, or robbery, or any other crime, *mala in se*, and prohibited by the law of nature, or which is heinous in its character, or dangerous in its consequence even in company with, or by coercion of her husband, she is punishable as much as if she were sole. (1 *Haw. c. 1, s. 9*; 1 *Hale, 47*; *Dalt. c. 157*; *Reg. v. Cruise, 8 C. & P. 541*; 2 *Moody, C. C. 53.*)

In heinous crimes no presumption of coercion allowed.

Where a wife, by the incitement of her husband, but in his absence, knowingly uttered a forged order and certificate for the receiving of prize-money, it was holden that they might be indicted together: the wife as principal, on the 49 Geo. 3, c. 123; and the husband as an accessory before the fact, at common law. (*Morris's case, 2 Leach, 1096*; 1 *Russ. 18*; *R & R, C. C. 270*. And see *R. v. Atkinson, cited 1 Russ. 20.*)

Uttering a forged order in husband's absence.

In *R. v. Martha Hughes*, (1 *Russ. 18*.) the question of the coercion of a husband upon a wife, in the offence of forgery, came under the consideration of *Thompson, B.* The prisoner, *Martha Hughes*, was indicted for forging and uttering Bank of England notes. The principal witness stated, that, in consequence of a conversation which he had had some time before with the prisoner's husband, he went to the husband's shop; that the husband was not present, but that he saw the prisoner, who beckoned him to go into an inner room; that she followed him into the room, and that he there told her what her husband had said to him; upon which they agreed about the business, and he bought of her three 2*l.* notes, at 1*l.* 4*s.* each; that he paid her for the notes, and was to receive 8*s.* in change. He further stated, that when he was putting the notes into his pocket-book, and before he had received the change, the husband looked into the room, but did not come in, or interfere in the business, further than by saying, "get on with you." After this, the witness and prisoner returned

Crime completed in husband's absence, but husband taking a part in it.



into the shop, where the husband was; the prisoner gave him the change, and both the prisoner and her husband cautioned him to be careful. Upon this evidence the counsel for the prisoner objected, that she acted under the coercion of her husband; that the evidence would have been sufficient to have convicted the husband, if both the husband and wife had been on their trial; and, therefore, that the prisoner ought to be acquitted. He referred to 2 *East's P. C.* 559; 1 *Hale*, 46; *R. v. Jones*, *Kel.* 37. *Thompson*, B., stopped the counsel for the prosecution, saying, "I am very clear as to the law on this point. The law, out of tenderness to the wife, if a felony be committed in the presence of the husband, raises a presumption *primâ facie*, and *primâ facie* only, as is clearly laid down by Lord *Hale*, (1 *Hale*, 516,) that it was done under his coercion; but it is absolutely necessary that the husband should in such case be actually present, and taking a part in the transaction. Here it is entirely the act of the wife. It is, indeed, in consequence of a communication previously with the husband, that the witness applies to the wife; but she is ready to deal, and has on her person the articles, which she delivers to the witness. There was a putting off before the husband came; and it was sufficient if, before that time, she did that which was necessary to complete the crime. The coercion must be at the time of the act done, and then the law, out of tenderness, refers it, *primâ facie* to the coercion of the husband. But when the crime has been completed in his absence, no subsequent act of his (although it might possibly make him an accessory to the felony of the wife) can be referred to what was done in his absence." (*Sed vide R. v. Price*, 8 *C. & P.* 19, where a woman was acquitted by the common serjeant after consulting *Bosanquet* and *Coltman*, J.J., where she was indicted with her husband for a misdemeanor in uttering counterfeit coin.)

Uttering coin.

Coercion of husband a mere presumption of law.

Receiving stolen goods.

And the coercion of the husband is only a presumption till the contrary appear; for if, upon the evidence, it can clearly appear that the wife was not drawn to it by the husband, but that she was the principal actor and incitor of it, she seems to be guilty as well as the husband. (1 *Hale*, 516.)

If a woman receive stolen goods into her house, knowing them so to be, or lock them up in her chest or chamber, her husband not knowing thereof; if her husband, so soon as he knoweth thereof, do forthwith forsake his house and her company, and make his abode elsewhere, he shall not be charged for her offence; whereas otherwise the law will impute the fault to him, and not to her. (*Dalt.* c. 157.)

But where husband and wife were convicted jointly of receiving stolen goods, it was holden that the conviction of the wife could not be supported, though she had been more active than her husband, because it had not been left to the jury to say whether she received the goods in the absence of her husband. (*R. v. Archer*, *R. & M.* 143.)

Perjury.

A married woman, who swore falsely that she was next of kin to a person dying intestate, and so procured administration to the effects, was held responsible for the offence, though her husband was with her when she took the oath. (*R. v. Dicks*, 1 *Russ.* 16.)

Threatening letter.

So, where a husband delivered a threatening letter ignorantly, as the agent of the wife, she alone was held to be punishable. (*R. v. Hammond*, 1 *Leach*, 447.)

Keeping a bawdy-house.

A wife may be indicted together with her husband and punished with him for keeping a bawdy-house; for this is an offence as to the government of the house, in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex. (1 *Haw.* c. 1, s. 12.)

Keeping a gaming-house.

So, she may be indicted for keeping a gaming-house. (*R. v. Dixon*, 10 *Mod.* 335. See "*Disorderly-House*."

So, for an assault. (*R. v. Cruise*, 2 *Moody*, C. C. 53; *P. C. & P.* 541.) An assault.

And generally a married woman shall answer as much as if she were sole for an offence, not capital, against the common law or statute; and if it be of such a nature that it may be committed by her alone, without the concurrence of her husband, she may be punished for it, without the husband, by way of indictment; which being a proceeding grounded merely on the breach of the law, the husband shall not be included in it for an offence to which he is no way privy. But if a wife incur the forfeiture of a penal statute, the husband may be made a party to an action or information for the same, (as he may generally to any suit for a cause of action given by his wife,) and shall be liable to answer what shall be recovered thereupon. (1 *Haw. c. 1*, s. 13.) Penal statute.

In the case of the *Attorney-General v. Riddle*, (2 *Crom. & J.* 493,) a wife who was proved to have authority from her husband, a paper maker, to do certain acts in his trade, pledged paper which had no wrapper, label, or departure stamp on it; the chief baron was of opinion at the trial that the husband was not liable for this act of his wife, but the court, upon motion, held that the authority of the wife was a question for the jury. Wife pledging.

A married woman by her own act (but not in respect of what is done by others at her command, because all such commands of her's are void) may commit a forcible entry or detainer; and upon the justice's view of the force, she shall be imprisoned therefore, and she may be fined in such case: but such fine set upon the wife, shall not be levied upon the husband; for the husband shall never be charged for the act or default of his wife but when he is made a party to the action, and judgment given against him and his wife. (*Dalt. c. 126*; *Hussey's case*, 9 *Rep.* 72; *Foster's case*, 11 *Rep.* 61.) Forcible entry.

Likewise, if she shall commit any riot, or do any trespass or other wrong, she is punishable for it; and for trespass done by the wife, or for a scandal published by her, the action lieth against both the husband and wife, and there the husband is chargeable to the damages or fine, because he is party to the action and judgment. But if a wife, without her husband, be indicted of a trespass, riot, or any other wrong, there the wife shall answer and be party to the judgment only; and in such case, the fine set upon the wife shall not be levied upon the husband; yet, after the husband's death, such damages or fines shall then be levied of the wife herself; and as for imprisonment, or other corporal pain, it shall be inflicted upon the wife only, and not upon the husband for his wife's act or default. (*Dalt. c. 139*.) Riot or trespass.

But it seems a prosecution for conspiracy is not maintainable against a husband and wife only; because they are esteemed but as one person in law, and are presumed to have but one will. (1 *Haw. c. 72*, s. 8.) Conspiracy.

If any man take another man's wife, with her husband's goods, against the husband's will, this is felony. (*Dalt. c. 157*.) Carrying her away with the husband's goods.

But a wife herself cannot feloniously take her husband's goods; and though she take her husband's goods, and deliver them to a stranger, yet it is no felony in the stranger. (*Hale's Sum.* 65; 1 *Haw. c. 33*, s. 19. And see *R. v. Willis*, 1 *R. & M. C. C.* 375; *R. v. Tolfree*, *Id.* 243.) But she may be guilty of felony in taking her husband's goods from the possession of another party. And if the wife steal the goods of her husband, and deliver them to B., who, knowing it, carries them away, B., being the adulterer of the wife, this would be felony in B.; for, in such case, no consent of the husband can be presumed. (*Dalt. c. 157*; 1 *Russ.* 19.) Wife taking the husband's goods.

A wife cannot be convicted under the 24 & 25 *Vict. c. 97*, s. 3, for setting fire to her husband's house, though she was living separate from him, and went by her maiden name, and had threatened to burn him to death. (*R. v. March*, 1 *R. & M.* 182.) Setting fire to his house.

How far can be  
an accessory to  
husband.

If a married woman incite her husband to the commission of a felony, she is an accessory before the fact; (1 *Hale*, 516; 2 *Hawk. c.* 29, s. 34;) but she cannot be treated as an accessory for receiving her husband, knowing that he has committed a felony; (1 *Hale*, 47;) nor for concealing a felon jointly with her husband. (*Id.*; 1 *Hawk. c.* 1, s. 10.) And she will not be answerable for her husband's breach of duty, however fatal, though she be privy to his misconduct, if no duty be cast upon her and she be merely passive. (*R. v. Squires*, 1 *Russ.* 16; *Jerv. Arch. C. L.*)

Where wife a  
mere servant.  
She not answer-  
able for her hus-  
band's breach of  
duty.

Nor when she, under such circumstances, is to be considered merely as the servant of the husband, though she may be privy to his conduct. *Charles Squire*, and *Hannah*, his wife, were indicted for the murder of a boy, who was bound as a parish apprentice to the prisoner *Charles*; and it appeared in evidence that both the prisoners had used the apprentice in a most cruel and barbarous manner, and that the wife had occasionally committed the cruelties in the absence of the husband. But the surgeon who opened the body, deposed, that in his judgment, the boy died from debility and want of proper food and nourishment, and not from the wounds, &c., which he had received. Upon which, *Lawrence, J.*, directed the jury, that as the wife was the servant of the husband, it was not her duty to provide the apprentice with sufficient food and nourishment, and that she was not guilty of any breach of duty in neglecting to do so; though, if the husband had allowed her sufficient food for the apprentice, and she had wilfully withholden it from him, then she would have been guilty. But that here the fact was otherwise; and therefore, though *in foro conscientie* the wife was equally guilty with her husband, yet, in point of law, she could not be said to be guilty of not providing the apprentice with sufficient food and nourishment. (*Ibid.*)

Description of in  
indictment.  
Proof of marriage.

If a married woman, indicted jointly with her husband, be described in the indictment as his wife, she need not prove her marriage, but will be entitled to protection, if it appear that she acted under his coercion: but the mere description will be no ground for dismissing the indictment as to the wife, for the indictment is joint and several, according to the facts as they may appear. (1 *Hale*, 46.) If she be described as a single woman, she must prove her marriage; (*R. v. Jones, Kel.* 37;) and such evidence must be given as will satisfy the jury of her marriage, although it is not absolutely necessary that the actual marriage should be proved. (*R. v. Atkinson*, 1 *Russ.* 20; *R. v. Hassell*, 2 *C. & P.* 434; *Reg. v. Woodward*, 8 *C. & P.* 561; *Jerv. Arch. C. L.*)

Laying property  
in wife.

If a married woman live apart from her husband, upon an income arising from property vested in trustees for her separate use, a house that she has hired to live in is properly described as the dwelling-house of her husband, though he had never been in it, and she paid the rent out of her separate property. (*R. v. French, R. & R. C.* C. 491.)

And if a wife be living apart from her husband, in a house built by him, though she be living in adultery with another man, who paid the housekeeping expenses, it may be laid as the dwelling-house of the husband; even if the husband suspected the criminal intercourse, when he placed her to live in the house. (*R. v. Wilford, R. & R. C.* C. 517.)

Evidence of wife.

Husband and wife cannot be witnesses for one another; nor generally against one another; (2 *Haw. c.* 46, s. 16;) nor against any other person indicted jointly with the husband or wife. (*R. v. Smith, 1 Moody, C. C.* 289.) There are, however, several exceptions to this rule; and see further, "Evidence."

So, in conspiracy, the wife of one of the defendants should not be allowed to give evidence against any of the others, as to any act done by him in furtherance of the common design; particularly after evidence

given connecting the husband with that defendant in the general conspiracy. (*R. v. Sergeant, R. & M. N. P. 352.*) So, a married woman cannot be called to prove a conversation between the prisoner and her husband, which goes to show that her husband and the prisoner committed the felony for which the prisoner is tried. (*R. v. Glead, Harrison's Dig. 849.*) But the wife of a person already convicted for the same offence is a competent witness against the prisoner. (*Reg. v. M. Williams, 8 C. & P. 284.*)

But a wife may demand surety of the peace against her husband, threatening to beat her outrageously; and a husband also may have it against his wife. (1 *Haw. c. 60, s. 4.*) Surety for the peace against husband.

And in other criminal cases, the wife may be a witness against her husband, where she is the party grieved; but not in civil cases. (*Dalt. c. 164.*)

(*R. v. Earl Ferrers, 1 Burr. 631.*) An *habeas corpus* was issued, commanding *Lawrence Earl Ferrers* to bring up the body of his countess, that she might receive the protection of the court against the said earl, and swear the peace against him if she should think proper. The earl disobeying the writ of *habeas corpus*, an attachment was granted against him. Upon which, he permitted her to come into court, and she exhibited articles of the peace against him. And the earl was obliged to enter into recognizance accordingly, himself in 5000*l.*, and two sureties in 2500*l.* each.

And a recognizance to the same effect has since that case been entered into by a peer of the realm. (See further, "*Surety of Peace.*")

A husband may justify a battery in defence of his wife, and a wife in defence of her husband. (2 *Rol. Ab. 546, D.*; 1 *Hawk. c. 60, ss. 23, 24.*) Defending each other.

If a woman, who is a servant, shall marry, yet she must serve out her time, and the husband cannot take her out of her master's service. (*Dalt. c. 58.* See "*Servants.*") Woman servant marrying.

Also, if a married man and his wife do bind themselves to serve, they shall be compelled to serve according to their covenant or agreement. (*Dalt. c. 58.*) Wife hiring to be a servant.

(*R. v. Mary Mead, 1 Burr. 342.*) An *habeas corpus* having issued at the instance of *John Wilkes, esq.*, to bring up the body of *Mary Wilkes*, wife of the said *John Wilkes*, and daughter of the said *Mary Mead*; *Mrs. Mead* now brought her into court. The substance of the return was, that her husband (having used her very ill) did, in consideration of a great sum which she gave him out of her separate estate, consent to her living alone, executed articles of separation, and covenanted (under a large penalty) never to disturb her, or any person with whom she should live; that she lived with her mother, at her own earnest desire; and that the writ of *habeas corpus* was taken out with a view of seizing her by force, or some other bad purpose. The court held this to be a formal renunciation by the husband of his marital right to seize her, or force her back to live with him. And they said, that any attempt of the husband to seize her by force and violence would be a breach of the peace. They also declared, that any attempt made by the husband to molest her in her present return from Westminster Hall, would be a contempt of the court; and they told the lady that she was at full liberty to go where and to whom she pleased. Husband and wife agreeing to live separate.

A wife cannot herself be bound by recognizance, but her sureties only. (*Dalt. c. 117; Bennet v. Watson, 3 M. & Sel. 1.*) Cannot be bound by recognizance.

Publicly selling or buying a wife is clearly an indictable offence. (*R. v. Delasalle, 3 Burr. 1438.*) And many prosecutions against husbands for selling, and others for buying, have been sustained, and imprisonment for six months inflicted. (*R. v. Padley, 27 July, 1818.* See *Form of Indictment, infra.*) Selling a wife.

Vagrant.

Deserting a wife and leaving her chargeable to parish, is an act of vagrancy; see 5 Geo. 4, c. 83, s. 3.

Right of wife to have children.

As to the right of the wife to have the children of the marriage, see "*Children.*"

Indictment for publicly exposing to sale and selling a wife.

— (venue.)—*The jurors for our lady the Queen upon their oath present, that A. B. late of the parish of , in the county of , on the day of , in the year of the reign of our lady the now Queen Victoria, on , at , with force and arms, did indecently, immorally, unlawfully, wickedly, deliberately, and wilfully, in and near certain public streets and highways there, publicly and in the presence and hearing of E. F., and divers other liege subjects of our said lady the Queen there then being, expose to sale, and offer to sell and dispose of, for lucre and gain; one C. D., then being the lawful wife of the said A. B., and all his, the said A. B.'s, marital rights of and concerning the said C. D., to any person or persons willing to buy and take her for the purpose and in order that such person and persons might unlawfully cohabit with and have unlawful carnal knowledge of the said C. D.; and did then unlawfully, publicly, and in the presence and hearing of the said liege subjects, and of the said E. F., endeavour to induce and persuade the said E. F. to purchase and take the said C. D. for the purpose aforesaid, and did then sell and dispose of the said C. D. and all his, the said A. B.'s, marital rights of and concerning the said C. D., to the said E. F., for a certain sum of money, to wit, the sum of [2s. 6d.], for the unlawful purpose aforesaid; and then, in pursuance of the sale, unlawfully, publicly, and in the presence and view of the said liege subjects, deliver the said C. D. into the hands and possession of the said E. F., with the intent that the said E. F. might unlawfully cohabit with and have carnal knowledge of the said C. D., and that the said E. F. might commit adultery with the said C. D.,\* to the great scandal and subversion of the holy state of matrimony and religion, and decency, morality, and good order to the great corruption of the morals and manners of her Majesty's liege subjects, to the great damage of the said C. D., and in contempt of our said lady the Queen and her laws, and to the great damage and common nuisance of all the liege subjects of our said lady the Queen then and there residing, inhabiting, being, and passing, to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity. And the jurors aforesaid, on their oath aforesaid, do further present, that the said A. B. on , at , aforesaid, contriving and intending to bring into contempt the holy state of matrimony and the duties enjoined thereby, and to vitiate and corrupt the morals of her Majesty's liege subjects, with force and arms, did indecently, immorally, unlawfully, wickedly, and wilfully, publicly, in the presence, view, and hearing of the said E. F., and of divers other liege subjects of our said lady the Queen there then being, expose to sale and offer to sale to the said E. F., for lucre and gain, the said C. D., then being the lawful wife of the said A. B., for the purpose and in order that the said E. F. might unlawfully cohabit with and have unlawful carnal knowledge of the said C. D.; and did then unlawfully and publicly, in the presence and hearing of the said liege subjects and of the said E. F., sell to the said E. F., for a certain sum of money, to wit, the sum of [2s. 6d.], for the unlawful purpose aforesaid, and did then in pursuance of the said last-mentioned sale, unlawfully, publicly, and in the presence of the said liege subjects, deliver the said C. D. unto the said E. F., with intent that the said E. F. might unlawfully cohabit with and have unlawful carnal knowledge of the said C. D., to the great, &c. [Conclude as in the first count, from\*]. And the jurors, &c., present, that the said A. B., on &c., at &c., aforesaid, did indecently, immorally, unlawfully, wickedly, deliberately, and wilfully, publicly, in the presence, view, and hearing of divers liege subjects of our said lady the Queen there then being, expose and offer to dispose of and deliver for money, to be therefore paid to him, the said A. B., the said C. D., then being his lawful wife, to any person, for the purpose of fornication, and in order that the said C. D. might commit adultery with such person; and did then publicly and in the presence, view, and hearing of the said liege subjects, dispose of and deliver the said C. D. to the said E. F. for a certain other sum of money, to wit, the further sum of [2s. 6d.], for the purpose last aforesaid, in contempt of our said lady the Queen and her laws, to the great damage and common nuisance of all the liege subjects of our said lady the Queen, to the evil example of all others, and against the peace of our said lady*

Second count.

Third count.

the Queen, her crown and dignity. 4th count.—Stating generally, that defend- Fourth count.  
ant unlawfully publicly exposed to sale, &c., and did unlawfully, publicly, &c.,  
sell the said C. D. to a certain other person to the jurors aforesaid as yet un-  
known, for a certain other sum of money, &c. 5th count.—Stating that he sold Fifth count.  
to E. F., in order that C. D. might thenceforth live separate and apart from the  
said A. B., and be no longer under his control, nor be supported or maintained  
by him, for a certain other sum of money, to wit, &c. 6th count.—Stating Sixth count.  
generally an exposing to sale.

## Witchcraft.

BY the 9 Geo. 2, c. 5, s. 3, it is enacted, That no prosecution, suit, or 9 Geo. 2, c. 5.  
proceeding, shall be commenced or carried on against any person or Prosecution for  
persons for witchcraft, sorcery, enchantment, or conjuration, or for witchcraft  
charging another with any such offence, in any court whatsoever in abolished.  
Great Britain.

Sect. 4. And for the more effectual preventing and punishing any Pretending to  
pretences to such arts or powers as are before mentioned, whereby witchcraft.  
ignorant persons are frequently deluded and defrauded, it is further  
enacted, that if any person shall pretend to exercise or use any kind  
of witchcraft, sorcery, enchantment, or conjuration, or undertake to  
tell fortunes, or pretend from his or her skill or knowledge in any  
occult or crafty science to discover where or in what manner any  
goods or chattels supposed to have been stolen or lost, may be found,  
every person so offending, being thereof lawfully convicted on indict-  
ment or information in that part of Great Britain called England, or  
on indictment or libel in that part of Great Britain called Scotland, Punishment for.  
shall for every such offence suffer imprisonment by the space of one  
whole year, without bail or mainprize, [and to stand on the pillory,] and  
also shall (if the court by which such judgment shall be given shall  
think fit) be obliged to give sureties for his or her good behaviour, in  
such sum, and for such time, as the said court shall judge proper, ac-  
cording to the circumstances of the offence, and in such case shall be  
further imprisoned until such sureties be given.

The punishment of pillory is now abolished in all cases by the 7 Pillory for, abo-  
Will. 4, & 1 Vict. c. 23. lished.

## Women.

CONCERNING women, considered as wives, or *fèmes couvertes*, see  
"Wife."

Concerning women having two husbands, or men two wives, see  
"Polygamy."

Concerning defilement of women, see "Offences against the person."

Concerning the ravishment of women, see "Rape."

Concerning the abduction of women, see "Abduction," and "Offences  
against the person."

Concerning abortion, see "Abortion," and "Offences against the  
person."

Concerning concealing birth of child, see "Offences against the  
person."

Concerning the carnal knowledge of children, see "Children."

Concerning the employment of, in mines, and collieries, and factories, see "*Mines*," "*Factories*."

Concerning aggravated assaults upon, see "*Offences against the person*."

Marriage act.

By the 4 Geo. 4, c. 76, s. 27, no suit shall be had in any ecclesiastical court, in order to compel a celebration of marriage *in facie ecclesie*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti*, or *per verba de futuro*. See "*Marriage*."

Peeresses how to be tried.

By the 20 Hen. 6, c. 9, peeresses shall be tried as peers for treason or felony. See "*Peers*."

Judgment in treason and felony.

The judgment against a woman, in case of high treason, was not the same as against a man—traitor, to be hanged, cut down alive, have the bowels taken out, and the body quartered; but it was to be drawn to the place of execution, and there burned.

And this, also, was the judgment against a woman in case of petit treason; whereas the judgment against a man, for petit treason, is that he shall be hanged.

Punishment for high or petit treason.

But now the punishment of burning women is abolished by the 30 Geo. 3, c. 48, the first section of which enacts that women, convicted of high treason or petit treason, shall not be burned, but shall be drawn to the place of execution, and be there hanged.

In case of felony, the judgment is the same against both man and woman, to be hanged by the neck till dead. (2 *Haw. c.* 48, s. 7.)

Plea of pregnancy.

It is clear, that if a woman quick with child be condemned either for treason or felony, she may allege her being with child in order to get the execution respited, and thereupon the sheriff shall be commanded to take her into a private room, and to empanel a jury of matrons, to try and examine whether she be quick with child or not; and, if they find her quick with child, the execution shall be respited till her delivery. But it is agreed that a woman cannot demand such respite of execution, by reason of her being quick with child, more than once. (2 *Haw. c.* 51, s. 9.)

Whipping of women.

By the 1 Geo. 4, c. 57, the punishment of whipping of females was abolished. (See "*Whipping*.")

Attending the torn and leet.

Women are not obliged to appear at the torn or leet. (2 *Haw. c.* 10, s. 11.)

Serving parish offices.

Mr. *Hawkins* seems to be of opinion that a custom of the inhabitants serving the office of constable by turns is good; and that when it comes to the turn of a woman inhabitant, she must procure one to serve for her. (2 *Haw. c.* 10, s. 37.)

And she may be appointed an overseer of the poor. (*R. v. Stubbs*, 2 *T. R.* 395; *R. v. Clapp*, 4 *T. R.* 110; *R. v. Cook*, 521. See "*Poor*.")

## Wood.

CONCERNING the maliciously setting fire to any wood, or stack of wood, &c., see "*Malicious Injuries to Property*."

Concerning the stealing of wood, fences, &c., see "*Larceny*."

As to the duties of customs on wood, &c., see "*Excise*."

52 Geo. 3, c. 72.  
Alice Holt forest.

By the 52 Geo. 3, c. 72, the queen is allowed to inclose not exceeding 1600 acres of land in the forest of Alice Holt, in the county of Southampton.

Sect. 6. And, for the better preservation of the trees, woods, underwoods, heritors, and standils growing, or which may hereafter be planted and nourished to grow or be growing in or upon any part of the said inclosures so to be made in pursuance of this act, as well

before as after the same shall be inclosed, be it further enacted, that all persons whosoever who shall, from and after the passing of this act, unlawfully cut down, split, bark, peel, damage, deface, destroy, or carry away any timber tree or other tree, woods, or covert, green stick, or any heritor or standil within the said forest as aforesaid, shall be subject and liable to all such pains, penalties, and punishments, as are provided by the laws and statutes of this realm to be given, imposed, or inflicted upon any person or persons committing the like offence or offences in the lands, grounds, woods, or coppices, being inclosed, and the private property of any of his Majesty's subjects.

52 Geo. 3, c. 72.

Damaging trees in forest of.

Sect. 7. That every person who shall wilfully destroy, or take away, or shall break down any fence or inclosure, or any part thereof, made for the protection of any nursery of wood and timber as aforesaid, shall for the first offence forfeit the sum of 10*l*.; and for the second offence the sum of 20*l*.; and for the third offence shall be deemed guilty of felony, and may be sentenced to penal servitude for seven years (27 & 28 Vict. c. 47), or be subject to such other punishment by fine, imprisonment, or otherwise, as the court before which such person shall be convicted may direct; and such penalties shall and may be recovered, and on non-payment thereof the person who shall forfeit the same may be committed to prison, in the manner and for the same periods as is specified in an act passed in the sixth year of the reign of his present Majesty, intituled "An Act for the better Preservation of Timber Trees, and of Woods and Underwoods, and for the further Preservation of Roots, Shrubs, and Plants," in relation to the penalties of 20*l*. and 30*l*. respectively, for wilfully cutting or breaking down any timber under the said act.

Breaking down inclosures in.

And by the 52 Geo. 3, c. 71, (since modified by 18 & 19 Vict. c. 46), similar provisions are enacted respecting the forest of Woolmer, in the county of Southampton, where the queen is allowed to inclose 2000 acres.

52 Geo. 3, c. 71.  
Woolmer forest.

The general inclosure act, 41 Geo. 3, c. 109, s. 28, imposes a forfeiture not exceeding 5*l*. on any person who shall wilfully and unlawfully break down, destroy, carry away, or damage any fence, stile, post, rail, gate, bridge, or tunnel, put up under the authority and for the purposes of any inclosure act, upon conviction before a justice of the county, &c. See "*Inclosure*."

41 Geo. 3, c. 109.  
Destroying fences, &c. put up under inclosure acts.

By the 29 Geo. 2, c. 36, by which the inclosure of wastes with the sanction of the owner of rights over the same, for the purpose of the growth and preservation of timber is allowed, it is enacted by s. 2, that where the inhabitants of any parish or township shall be willing to acquire such right of inclosure, for the employment and benefit of their poor, they may (by the consent and direction of the major part of the inhabitants, assembled at a vestry or public meeting to be held for that purpose, public notice thereof in the church<sup>(a)</sup> being first given on three Sundays before) pay the recompense for the same, and the charges of inclosing and preserving such grounds, out of the poor rate; and shall apply the profit from the sale of such timber or underwood towards the relief of the poor. *Note.* Here is no allowance for the charges of planting.

29 Geo. 2, c. 36.  
Where it is for the relief of the poor.

Sect. 3. And the agreement for such inclosure shall be in writing, and signed by the parties, and, within three months after the execution thereof, be inrolled by the clerk of the peace where the greater part of such wastes, woods, or pastures shall lie.

And by the 10 Geo. 3, c. 42, further time is given for such inrolment, provided the same shall have been made on or before December

10 Geo. 3, c. 42.

(a) Now by 7 Will. 4 and 1 Vict. c. 45, s. 2, such notice is to be reduced into writing or print, and, previously to the commencement of divine

service, copies of it shall be affixed on or near to the doors of the church, &c., to be in lieu of the notices given in church, &c.



25, 1770. And inclosures made before the passing of this act of 10 Geo. 3, c. 42, though not strictly according to the directions of the said former acts, are enacted to be good and valid.

29 Geo. 2, c. 36.  
Appeal.

By the 29 Geo. 2, c. 36, s. 4, persons aggrieved by such agreement may, within six months after the enrolment, appeal to the sessions, whose determination shall be final. And if no such appeal shall be made, the agreement shall be for ever binding.

## Woollen Manufacture.

HEREIN concerning—

I. *The Stealing of Cloth*, p. 1244.

[15 Geo. 2, c. 27.]

II. *Privileges granted to Woolcombers*, p. 1245.

[49 Geo. 3, c. 109.]

### I. *The Stealing of Cloth.*

As to the stealing of woollen cloth in course of manufacture, see "*Larceny.*"

15 Geo. 2, c. 27.  
Search for cloth  
stolen off tenters,  
and wool, &c.,  
left to dry.

Because it is often difficult to prove the owner's property in the cloth, therefore, by the 15 Geo. 2, c. 27, s. 1, it is enacted, that in case any cloth or woollen goods, remaining upon the rack or tenters, or any woollen yarn, or wool left out to dry, shall be stolen or taken away in the night time, it shall and may be lawful to and for any one or more justice or justices of the peace of the same county or place, upon complaint made to him or them, within ten days after such cloth, woollen goods, woollen yarn, or wool, shall have been so stolen or taken away by the owner of such cloth, woollen goods, woollen yarn, or wool, by warrant under his or their hands and seals, to authorise and empower any constable, head borough, or other peace officer, in the daytime, to enter into, and search the houses, out-houses, yards, gardens, or other places belonging to the houses of all and every person and persons whom the owner of such cloth, woollen goods, woollen yarn, or wool, shall, upon his oath, declare to such justice or justices of the peace, he suspects to have stolen, taken away, or received the same; and in case such constable or other officer shall find or discover any cloth, woollen goods, or wool, which he shall, from the information of the person making such oath, have reason to suspect to be so stolen, taken away, or received, he shall forthwith apprehend all and every person or persons in whose custody or possession such cloth, woollen goods, or wool, shall be found, and carry him, her, or them, before some justice or justices of the peace of the same county, riding, division, liberty, city, or town corporate; and if the said person or persons so suspected, apprehended, and carried before the said justice or justices, shall not then and there give a satisfactory account, how he, she, or they acquired the property or possession of such cloth, woollen goods, woollen yarn, or wool, or shall not, within some convenient time to be set by the said justice or justices, produce the party or parties of whom he, she, or they received the same, or some other credible witness, to depose, upon oath, such property or right to the possession of the said cloth, woollen goods, woollen yarn, or wool (which oath the said justice or justices is and are hereby empowered to administer), that the said person or persons so suspected, and not giving such satisfactory account, nor producing any such witness upon oath to testify as aforesaid, shall be deemed and adjudged as convicted of the said

Woollen goods  
found, to be ac-  
counted for before  
a justice.

offence of stealing or taking away the said cloth, woollen goods, woollen yarn, or wool, and shall, for the first offence, forfeit and pay to the owner of such cloth, woollen goods, woollen yarn, or wool, treble the value thereof; and in default of payment thereof, in the time appointed by such justice or justices for the payment thereof, such justice or justices of the peace shall issue forth his or their warrant to levy the same by distress and sale of the offender's goods, returning the overplus, if any be; and, in default of such distress, shall commit the offender or offenders to the common gaol of the county, city, or place where the said offender or offenders shall be apprehended, there to remain for the space of three months, without bail or mainprize, or until he, she, or they pay the same; and if such person or persons shall again commit the said offence, and be thereof convicted as before, then they, and every of them, so offending the second time, and being thereof so convicted, shall, over and above the forfeiture of treble the value of the cloth, woollen goods, woollen yarn, or wool, so found to be recovered and levied as aforesaid, be committed to the common gaol as aforesaid, there to remain for the space of six months, without bail or mainprize; and if such person or persons shall again commit the said offence, and be thereof convicted as before, the justice or justices of the peace before whom such person or persons shall be so convicted as aforesaid, shall forthwith issue his or their warrant to commit the said offender or offenders to the common gaol as aforesaid, there to remain till the next assizes, or great session, where the said offender or offenders shall be tried for the said offence; and in case such offender or offenders shall not, by producing the party or parties of whom he, she, or they acquired the property or possession of such cloth, woollen goods, woollen yarn, or wool, or otherwise prove to the satisfaction of the jury, that he, she, or they lawfully obtained the property or possession of the same, he, she or they shall be adjudged to be guilty of felony, and suffer (penal servitude, 27 & 28 Vict. c. 47), for the space of seven years.

Sect. 2. Provided, that if any person or persons so suspected and apprehended as aforesaid, shall find him, her, or themselves aggrieved by any judgment or determination, which shall be given or made by any justice or justices of the peace, by virtue of this act, it shall and may be lawful to and for such person or persons so aggrieved (unless he, she, or they have twice before been convicted of the same offence), to appeal unto the justices of the peace in their general quarter sessions, which shall happen to be held next after such judgment or determination given or made, who are hereby authorised and empowered to give such relief, and make such order therein as to them shall seem meet; and such judgment, order, or determination as shall be by them made upon the said appeal, shall be final, to all intents and purposes whatsoever.

1. *The Stealing of Cloth.*

15 Geo. 2, c. 27.  
Offender to forfeit treble value.

Penalty to be levied by distress and sale.

Second offence six months' imprisonment.

Penal servitude for seven years for third offence.

Appeal to sessions.

## II. Privileges granted to Woolcombers.

By the 49 Geo. 3, c. 109, s. 5, all persons who shall have served an apprenticeship to any branch of the woollen manufacture, or are by law entitled to exercise the same, and also their wives and children, may set up and exercise such trade, or any other trade or business which they are apt and able for, in any town or place, without suit or molestation by reason of using such trade. And if any such, or his wife or child, shall be prosecuted for exercising any such trade as aforesaid, on his making it appear that he has served a legal apprenticeship to the said trade, or that she is the wife or child of any person who has served such apprenticeship, he or she shall, upon the general issue pleaded, be found not guilty, and shall have double costs.

49 Geo. 3, c. 109.  
May set up trades.

2. *Privileges granted to Wooll-combers.*

49 Geo. 3, c. 109.

May be summoned to make oath of their settlement.

By sects. 6 & 7, two justices, where any such person or his wife and family shall exercise such trade, may summon every such person before them, and examine him on oath concerning the place of his last legal settlement, who shall obey such summons, and make oath accordingly; and such justices shall give an attested copy of such affidavit, so made before them, to the person making the same, in order that he may produce it when required, which attested copy shall be admitted as evidence as to such settlement before the justices at any sessions; and if such person, or his wife or child, shall again be summoned to make oath as aforesaid, then, on producing such attested copy, he shall not be obliged to take any other or further oath, but shall leave a copy of such attested copy, if required.

Sect. 8. Provided, that this act shall not prejudice the universities. And by sect. 9, not to extend to the city of London.

And by sect. 3, this act, which repeals so much of the 5 Eliz. c. 4, as relates to apprentices to the woollen manufactures, shall not annul any contract of apprenticeship whereby any person shall have bound or shall bind himself as an apprentice in any of the occupations of woollen manufacture for any period allowed by law: Provided always, that such apprenticeship shall not be required as a previous qualification for exercising any branch of the woollen manufacture, either as a master or a journeyman.

## Workshops.

30 & 31 Vict. c. 146.  
Short title.

General definitions.

By "The Workshop Regulation Act, 1867," for regulating the hours of labour for children, young persons, and women employed in workshops; and for other purposes relating thereto, and which applies to the whole of the United Kingdom, it is enacted that—

Sect. 4. The following words and expressions shall in this act have the meanings hereby assigned to them, unless there is something in the context inconsistent with such meanings; that is to say,

"Child" shall mean a child under the age of thirteen years:

"Young person" shall mean a person of the age of thirteen years and under the age of eighteen years:

"Woman" shall mean a female of the age of eighteen years or upwards:

"Parent" shall mean parent, guardian, or person having the custody of or control over any such child or young person:

"Employed" shall mean occupied in any handicraft, whether for wages or not, under a master or under a parent as herein defined:

"Handicraft" shall mean any manual labour exercised by way of trade or for purposes of gain in or incidental to the making any article or part of an article, or in or incidental to the altering, repairing, ornamenting, finishing, or otherwise adapting for sale any article:

"Workshop" shall mean any room or place whatever, whether in the open air or under cover, in which any handicraft is carried on by any child, young person, or woman, and to which and over which the person by whom such child, young person, or woman is employed has the right of access and control:

"The court" shall include any justice or justices, sheriff or sheriff substitute, magistrate or magistrates, to whom jurisdiction is given by this act.

Sect. 5. This act shall not apply,

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Application of act.

- (1.) To any factory or part of a factory, or other place subject to the jurisdiction of the inspectors of factories, in pursuance of any act of parliament already passed or which shall be passed during this present session of parliament :

- (2.) To any bakehouse as defined by "The Bakehouse Regulation Act, 1863."

Sect. 6. Subject to the exceptions mentioned in the first schedule annexed hereto, the following regulations shall be observed with respect to the employment of children, young persons, and women in workshops: Regulations as to time of labour.

- (1.) No child under the age of eight years shall be employed in any handicraft :

- (2.) No child shall be employed on any one day in any handicraft for a period of more than six and a half hours, and such employment shall take place between the hours of six in the morning and eight at night :

- (3.) No young person or woman shall be employed in any handicraft during any period of twenty-four hours for more than twelve hours, with intervening periods for taking meals and rest amounting in the whole to not less than one hour and a half, and such employment shall take place only between the hours of five in the morning and nine at night :

- (4.) No child, young person, or woman shall be employed in any handicraft on Sunday, or after two o'clock on Saturday afternoon, except in cases where not more than five persons are employed in the same establishment, and where such employment consists in making articles to be sold by retail on the premises, or in repairing articles of a like nature to those sold by retail on the premises :

- (5.) No child under the age of eleven years shall be employed in grinding in the metal trades or in fustian cutting.

Sect. 7. If any child, young person, or woman is employed in contravention of this act, the following consequences shall ensue :

Penalty for employment of children, young persons, and women contrary to the provisions of this act.

First, the occupier of the workshop in which such child, young person, or woman is employed shall be liable to a penalty of not more than 3*l*. :

Second, the parent of or the person deriving any direct benefit from the labour of or having the control over the child, young person, or woman shall be liable to a penalty of not more than 20*s*., unless it appears to the court before whom the complaint is heard that the offence has been committed without the consent, connivance, or wilful default of the parent or person so benefited, or having such control.

Sect. 8. In every workshop where grinding, glazing, or polishing on a wheel, or any other process is carried on by which dust is generated and inhaled by the workmen to an injurious extent, if it appears to the local authority or to any inspector of factories that such inhalation could be to a great extent prevented by the use of a fan or other mechanical means, it shall be lawful for the local authority or for the inspector of factories, by notice served on the occupier of the workshop in the manner in which notices given by such local authority or by the inspector of factories are usually served, to require a fan or such mechanical means as may from time to time be approved by one of her Majesty's principal secretaries of state, under the provisions of the factory acts, to be provided by the occupier of the workshop within a reasonable time. Provision with respect to use of fan in grinding.

If the occupier of any workshop fails to provide a fan or other mechanical means in compliance with a notice served on him in manner aforesaid he shall be deemed to be guilty of an offence against this act, and to be subject in respect of such offence to a penalty not exceeding 10*l*. nor less than 3*l*.

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The court having jurisdiction to inflict any penalty under this act may, in addition to or instead of inflicting such penalty in respect of an offence under this section, make an order directing that within a certain time to be named in such order he do provide such fan or other mechanical means: the court may upon application enlarge any time appointed for the adoption of the means directed by the order, but any non-compliance with the order of the court shall, after the expiration of the time as originally limited or enlarged by subsequent order, be deemed to be a continuing offence and to be punishable by a penalty not exceeding 1*l.* for every day that such non-compliance continues.

Power to officers appointed by local authority, &c. to enter workshops.

Sect. 9. If, on the complaint of any officer of health, inspector of nuisances, or other officer appointed by a local authority, or of any superintendent of police, it appears to any justice of the peace that there is reasonable cause for believing that any of the provisions of this act or of the Sanitary Act, 1866, are contravened in any workshop, it shall be lawful for such justice, by order under his hand, to empower the complainant to enter into such workshop at any time within forty-eight hours from the date of such order, and to examine such workshop; and any person so empowered may examine, touching any matter within the provisions of this act or of the Sanitary Act, 1866, so far as relates to such workshop, any person whom he finds in such workshop.

Penalty on persons refusing admission.

Any person refusing admission to any person so empowered or obstructing him in the discharge of his duty, shall for each offence incur a penalty not exceeding 20*l.*

Power to Inspector or sub-inspector of factories to enter workshops and inspect condition thereof.

Sect. 10. Any inspector or sub-inspector of factories may, when any person is at work at any handicraft, enter any workshop and inspect the condition thereof, and examine, touching any matter within the provisions of this act or of the Sanitary Act, 1866, so far as relates to such workshop, the persons therein, provided that he report to one of her Majesty's principal secretaries of state the fact of such entry, and the condition of the workshop, in his next half-yearly report.

Penalty on obstructing inspector, &c.

Any person obstructing any inspector or sub-inspector in making such entry as aforesaid, or in his inspection of a workshop, shall for each offence be liable to a penalty not exceeding 20*l.*

Liability of hirer of machine instead of occupier.

Sect. 11. Where in any workshop the owner or hirer of any machine or implement moved by steam, water, or other mechanical power, in or about or in connexion with which machine or implement children, young persons, or women are employed, is some person other than the occupier of the workshop, and such children, young persons, or women are in the employment and pay of the owner or hirer of such machine or implement, in any such case such owner or hirer shall, so far as respects any offence against this act which may be committed in relation to such children, young persons, or women, be deemed to be the occupier of the workshop.

Recovery and application of penalties.

Sect. 12. All penalties under this act may be recovered summarily, as to England before two or more justices in manner directed by 11 & 12 Vict. c. 43, or any act amending the same; as to Ireland in manner directed by 14 & 15 Vict. c. 93, or any act amending the same.

The court imposing any penalty under this act may direct the whole or any part thereof to be applied in or towards the payment of such costs of the proceedings as the court thinks just (including compensation for loss of time to the person upon whose information such penalty was recovered), and, subject as aforesaid, all penalties shall be applied in the manner directed by the acts referred to in this section.

Description of local authority.

Sect. 13. For the purposes of this act, in the several places mentioned in the first column of the second schedule hereto annexed the

local authority shall be the bodies of persons or persons in that behalf specified in the second column of the same schedule, and such schedule, with the explanation annexed thereto, shall be deemed to be part of this act.

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Sect. 14. The following regulations shall be made (subject to the provisions hereinafter mentioned) respecting the education of children employed in workshops:

Regulations for attendance at school of children employed in workshops.

- (1.) Every child who is employed in a workshop shall attend school for at least ten hours in every week during the whole of which he is so employed:
- (2.) In computing for the purpose of this section the time during which a child has attended school there shall not be included any time during which such child has attended either
  - (a) In excess of three hours at any one time, or in excess of five hours on any one day; or
  - (b) On Sundays; or
  - (c) Before eight o'clock in the morning, or after six o'clock in the evening:

Provided, that the non-attendance of any child at school shall be excused—

- (1.) For any time during which he is certified by the principal teacher of the school to have been prevented from attendance by sickness or other unavoidable cause:
- (2.) For any time during which the school is closed for the customary holidays, or for some other temporary cause:
- (3.) For any time during which there is no school which the child can attend within one mile (measured according to the nearest road) from the workshop or the residence of such child.

Sect. 15. The parent of every child employed in a workshop shall cause that child to attend school in manner required by this act.

Parents to cause children to attend school.

Every parent who wilfully fails to act in conformity with this section shall be liable to a penalty of not more than 20s. for each offence.

Sect. 16. Every occupier of a workshop who has employed a child for any time amounting in the whole to not less than fourteen days shall on Monday in every week during the employment of such child obtain from the principal teacher of some school a certificate that the child so employed has, in manner required by this act, attended school during the preceding week, if attendance at school was so required during that week.

Occupiers of workshops shall obtain certificates of attendance of children at school.

The certificate may be in the form contained in the third schedule hereto, or in such other form as one of her Majesty's principal secretaries of state may from time to time prescribe.

The employer shall keep the said certificate for one month, and shall produce the same to any inspector or sub-inspector of factories whenever required by him during that period.

Every person who acts in contravention of this section shall be liable to a penalty of not more than 3*l*.

Sect. 17. The principal teacher of a school which is attended by any child employed in a workshop may apply in writing to the occupier of such workshop to pay such sum as hereinafter mentioned on account of any child in respect of whom he may have duly granted a certificate in pursuance of this act, and after the date of such application the occupier, so long as he employs the child, shall pay to the principal teacher of the said school for every week that the child attends that school the weekly sum specified in the application, not exceeding twopence per week, and not exceeding one twelfth part of the wages of the child. The occupier may deduct the sum so paid by him from the wages payable for the services of such child.

On application of teacher, occupier to pay sum for schooling of child, and deduct it from wages.

Any occupier who, after such application, refuses to pay on demand

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Inspector may  
disqualify for  
granting certi-  
ficates any teacher  
who is unfit.

any sum that may become due as aforesaid, shall be liable to a penalty not exceeding 10s.

If an inspector of factories is satisfied, by inspection of a school or otherwise, that the principal teacher of a school who grants certificates of school attendance required under this act ought to be disqualified for granting such certificates for any of the following reasons; namely,

1. Because he is unfit to instruct children by reason either of his ignorance or neglect, or of his not having the necessary books and materials;
2. Because of his immoral conduct;
3. Because of his continued neglect to fill up proper certificates of school attendance—

in any such case he may serve on the teacher a written notice, stating the reason for such disqualification. At the expiration of two weeks from the date of such notice the teacher shall, subject to the appeal hereinafter mentioned, be disqualified for granting certificates.

The inspector shall, so far as he can, serve on every occupier of a workshop who obtains certificates from such teacher a notice to the like effect as the notice served on the teacher, and also specifying a school which the child employed in the workshop of such occupier can attend within one mile (measured according to the nearest road) from the workshop or the residence of the child.

Any teacher who is disqualified as aforesaid, and any occupier of a workshop who obtains certificates from him, may, within three weeks after the service of the notice on the teacher, appeal therefrom to one of her Majesty's principal secretaries of state, who may confirm or reverse such disqualification.

After a teacher is disqualified for granting certificates no certificate given by him shall be deemed to be a certificate in compliance with this act, unless in the case of there being no other school which the child employed in a workshop can attend within one mile (measured according to the nearest road) from the workshop or the residence of such child, or unless with the written consent of an inspector of factories.

The inspectors of factories shall in their reports to one of her Majesty's principal secretaries of state report the name of every teacher disqualified under this section during the preceding six months, the name of the school at which he taught, and the reason for the disqualification; and in the case of such teacher's continued neglect to fill up proper certificates, shall report the fact of such neglect to the committee of council on education, if such teacher be employed in any school in receipt of annual grants made by the committee of council on education.

Every person who forges or counterfeits any certificate required by this act, or gives or signs any such certificate falsely, or wilfully makes use of any forged, counterfeited, or false certificates, or aids in or connives at any of the foregoing offences, shall be guilty of a misdemeanor, and be liable to be imprisoned for any period not exceeding three months, with or without hard labour.

Sect. 18. It shall be the duty of the local authority to enforce within their jurisdictions the provisions of this act, so far as relates to any powers or authorities conferred on the local authority by this act, and all expenses incurred by them in enforcing the same may be defrayed out of any funds in their hands, or any rates leviable by them and applicable to any purpose relating to the improvement, paving, cleansing, or management of the places within their jurisdiction, or, in cases where the local authority is in the receipt of any poor rate, out of any such rate.

Sect. 19. Where any proceedings are taken against any person in

Penalty for forg-  
ing, &c., certi-  
ficate.

Local authority  
to enforce act.

Provision as to  
pleading that

respect of any offence under this act committed in or relating to a workshop, it shall not be competent for the defendant to prove that such workshop is a factory within the meaning of any act for regulating factories unless he has previously given notice of its being a factory to the inspector of factories in manner required by any act of parliament in that behalf.

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workshop is a  
factory.

Sect. 20. Every inspector or sub-inspector of factories shall be furnished with such certificate of his appointment as the secretary of state may direct; and on applying for admission to any workshop, such inspector or sub-inspector shall, if required, produce to the occupier the said certificate; every person who forges or counterfeits any such certificate, or makes use of any forged, counterfeited, or false certificate, or falsely pretends to be an inspector or sub-inspector of factories, shall be guilty of a misdemeanor, and be liable to be imprisoned for any period not exceeding three months, with or without hard labour.

Inspector or sub-  
inspector to be  
furnished with  
certificate of his  
appointment.

## FIRST SCHEDULE referred to in the foregoing Act.

### TEMPORARY EXCEPTIONS.

1. During the first six calendar months next ensuing the 1st January, 1868, hereinafter referred to as the commencement of this act, children of not less than eleven years of age may be employed for the same time, and subject to the same conditions, for and subject to which young persons may be employed under this act :

2. During the first thirty calendar months next ensuing the commencement of this act, children of not less than twelve years of age may be employed for the same time, and subject to the same conditions, for and subject to which young persons may be employed under this act :

3. During the first twelve calendar months next ensuing the commencement of this act, children, young persons, and women may be employed on Saturdays until half-past four o'clock in the afternoon :

4. During the first thirty calendar months next ensuing the commencement of this act, children, young persons, and women may be employed in the manufacture of preserves from fruit in the same manner as they were employed therein before the passing of this act :

5. During the first thirty calendar months next ensuing the commencement of this act, male young persons of not less than sixteen years of age may be employed in any workshop where the manufacture of machiney is carried on in the same manner as if they were male persons exceeding the age of eighteen years.

### PERMANENT EXCEPTIONS.

6. Whereas the customs or exigencies of certain trades require that male young persons of the age of sixteen years and upwards should be occasionally employed beyond the hours allowed by this act; it shall be lawful for one of her Majesty's principal secretaries of state, on due proof to his satisfaction that such customs or exigencies exist, and that such occasional employment is not injurious to the health of such male young persons, from time to time, by order to be advertised in the London Gazette, or otherwise published in such manner as he may think fit, to give permission that in the case of any particular workshop or class of workshops male young persons of sixteen years of age and upwards may be employed for a period not exceeding fifteen hours on any one day :

Provided that—

1st. They are not so employed except between the hours of six in the morning and nine in the evening.



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2nd. In addition to the time allowed under this act for meals, they shall be allowed half an hour for a meal after the hour of five in the evening.

3rd. They are not so employed for more than twelve days in any period of four weeks, nor on the whole for more than seventy-two days in any period of twelve months.

7. In any workshop in which the mechanical power is water, and in any workshop or class of workshops with respect to which one of her Majesty's principal secretaries of state certifies by order under his hand that it has been proved to his satisfaction that by reason of the nature of the business it is necessary to carry on the same throughout the night, it shall be lawful to employ male young persons during the night, subject to the same intervals of rest which they are allowed during the day, and subject to this provision, that no male young person employed during the night shall be employed during either the preceding or succeeding day, and that no male young person shall be employed more than six nights in any fortnight.

For the purposes of the last-mentioned provision, night shall mean any time between six o'clock in the afternoon of one day and six o'clock of the morning of the following day.

8. So much of this act as forbids the employment of young persons and women on any Saturday after two o'clock of the afternoon shall not apply to male young persons employed in day and night turns, changing every alternate week, nor in any week to any woman or young person whose hours of actual work have not in any day in such week exceeded eight.

9. The said secretary of state, on proof to his satisfaction that the customs or exigencies of trade, or any other special circumstances, require the alteration to be made, may, by order to be advertised in the London Gazette, or otherwise published in such manner as the secretary of state may think fit, give permission, with respect to any particular workshop or class of workshops for all or any of the following things; namely,—

(1.) That children, young persons, or women may be employed between two and eight o'clock in the afternoon on Saturday, provided that in any such workshop or workshops arrangements are made to the satisfaction of the said secretary of state for giving on some workday in every week to every child, young person, or woman employed a half holiday of equal length either at the beginning or at the end of their day's work; or,

(2.) That in any workshop in which it is proved to his satisfaction that work does not commence before the hours of seven or eight in the morning children, young persons, and women may be employed on Saturday, or on any other day on which the weekly half-holiday is given, from the hours of seven in the morning to three in the afternoon, or from eight in the morning to four in the afternoon, subject to the usual hours for meals.

(3.) That male young persons of not less than sixteen years of age may be employed in the same manner as if they were male persons exceeding the age of eighteen.

10. Where the occupier of any workshop is a person of the Jewish religion, and it is his custom to keep such workshop closed on Saturday until sunset, it shall be lawful for him to employ young persons or women on that day from after sunset until nine o'clock at night.

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## SECOND SCHEDULE referred to in the preceding Act.

30 & 31 Vict.  
c. 146.

COLUMN (1).	COLUMN (2).
Places within Jurisdiction of Local Authority.	Description of Local Authority.

### ENGLAND AND WALES.

The city of London and the liberties thereof.	Commissioners of sewers of the city of London.
Parishes within the metropolis mentioned in Schedule (A.) to "the Metropolis Management Act, 1855."	The vestries incorporated by the "Metropolis Management Act, 1855."
Districts within the metropolis formed by the union of the parishes mentioned in Schedule (B.) to the "Metropolis Management Act, 1855."	The board of Works for the district incorporated by the "Metropolis Management Act, 1855."
Boroughs, excepting Oxford.	The mayor, aldermen, and burgesses, acting by the council. The local board.
The borough of Oxford and any place not included in the above descriptions, and within the jurisdiction of a local board constituted in pursuance of the "Public Health Act, 1848," and the "Local Government Act, 1858," or one of such acts.	
Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons entrusted by any local act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons entrusted by the local act, with powers of improving, cleansing, or paving the town.
Any parish not within the jurisdiction of any local authority hereinbefore mentioned, and in which a separate rate is or can be levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.

### IRELAND.

The city of Dublin.	The right honourable the lord mayor, aldermen, and burgesses, acting by the town council.
Towns corporate with exception of Dublin.	The mayor, aldermen, and burgesses, acting by the town council.
Towns having town commissioners under the "Towns Improvement (Ireland) Act, 1854" (17 & 18 Vict. c. 113), or under any local act.	The town commissioners.
Townships having commissioners under local acts.	The township commissioners.
Towns under commissioners appointed by virtue of an act made in the ninth year of George the Fourth, intituled "An Act to make Provision for lighting, cleansing, and watching of Cities and Towns Corporate and Market Towns in Ireland in certain Cases."	The commissioners.
Towns having municipal commissioners, under 3 & 4 Vict. c. 108.	The municipal commissioners.
Any place not included in the foregoing descriptions.	The guardians of the poor of the union in which such place is situate.

30 & 31 Vict.  
c. 146.

*Explanation.*

In this schedule the following words shall have the meanings hereinafter assigned to them; that is to say,

(1.) "Borough" in England shall mean any place for the time being subject to the act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales."

THIRD SCHEDULE.

FORM OF CERTIFICATE OF SCHOOL ATTENDANCE.

*School.*

*I do hereby certify that* [Christian name and surname of the child] *has attended the above school for not less than ten hours during the week ending on Saturday, the* \_\_\_\_\_ *day of* \_\_\_\_\_, 18 .

(Signed) A. B.

*Principal teacher of the above school.*

*Date* \_\_\_\_\_ *of* \_\_\_\_\_, 18 .

*Address of school.*

**Wreck (a).**

See the provisions regulating this subject, "*Ships*," *ante*.

As to burial of dead bodies cast on shore, see "*Bodies*."

I. *Wreck, what, and who entitled to*, p. 1254.

[3 Edw. 1, c. 4; 17 Edw. 2, st. 1, c. 11.]

II. *Salvage in Cinque Ports*, p. 1256.

[1 & 2 Geo. 4, c. 76.]

I. **Wreck, what, and who entitled to.**

Wreck, what,

**WRECK** of the sea, in legal understanding, is applied to such goods as after shipwreck at sea are by the sea cast upon the land; and therefore the jurisdiction thereof pertaineth not to the lord admiral, but to the common law. (2 *Inst.* 167.)

Jetsam, flotsam,  
and ligam.

None of those goods which are called *jetsam* (from being cast into the sea while the ship is in danger, and which there sink and remain under water), or those called *flotsam* (from floating on the surface of the water), or those called *ligam* (which lie in the bottom of the sea, but tied to a cork or buoy, in order to be found again), are to be esteemed wreck, so long as they remain in or upon the sea, and are not cast upon the land by the sea; but if any of them are cast upon the land by the sea, they are wreck. (1 *Bla. Com.* 292.)

(a) See in general, Hall on Aquatic Rights, p. 293, &c.; *Bla. Com.* Vol. i. p. 290; Vol. ii. p. 14; Vol. iii. p. 106.

Also, by the 3 Edw. 1, c. 4, where a man, a dog, or a cat, escape quick out of the ship, the ship, or anything therein, shall not be adjudged a wreck. 1. *Wreck, what, and who entitled to.*

Which statute being but declaratory of the common law, these three instances "a man, a dog, or a cat," are only put for examples; for, besides these two kinds of beasts, all other beasts, fowls, and other living things are understood, whereby the property of the goods may be known. (2 *Inst.* 167.) Living creature escaping.

And it is now holden, that not only if any live thing escape, but if proof can be made of the property of any of the goods or lading which came on shore, they shall not be forfeited as wreck. (1 *Bla. Com.* 290.) As in the case of *Hamilton v. Davies*, (5 *Burr.* 2732.) The ship was lost. The goods cast on shore were sufficiently marked, so as that the owner might be known. But the lord of the manor refused to deliver them up, insisting that they were forfeited as wreck, because no living creature had come alive from the ship to the shore. By Lord *Mansfield*, C. J.—"No case hath been produced in the argument of this cause, to prove that the goods were forfeited, because no dog, or cat, or other animal came alive to shore. I will therefore presume, that there never was any such determination; and that no case could have been determined, so contrary to the principles of law, justice, and humanity. The very idea of it is shocking. And there is no ground for such a forfeiture, upon the distinction that hath been so much urged, between a man or other animal coming to shore alive or not alive. The coming to shore of a dog or a cat alive, can be no better proof than if they should come ashore dead. The escaping alive makes no sort of difference. If the owner of the animal were known, the presumption of the goods belonging to the same person would be equally strong, whether the animal were living or not." And the court were clear and unanimous that the owner was entitled to his goods again, on his paying or tendering a reasonable salvage. Goods cast on shore.

Things floating, though between high and low water mark, not having touched the ground, cannot be *wreccum maris*. If fixed to the land between high and low water mark, though with some water round them, they are *wreccum maris*. If after having once touched the land between high and low water mark they are again afloat, they are not necessarily *wreccum maris*, but their legal character will depend on the particular circumstances. (*Rex v. Two Casks of Tallow*, 3 *Hagg.* 294.) Goods floating between high and low water mark.

The term "wreck" in the 3 & 4 Will. 4, c. 52, s. 50, (see *tit. "Customs,"*) is not necessarily limited to goods which become forfeit to the crown or its grantee, by not being claimed within a year and a day, according to statute of Westminster 1 (3 Edw. 1, c. 4). As where goods imported into this country were warehoused, entered for exportation, and shipped for Belgium: the vessel was lost within the English port, and the goods, being partly thrown upon the shore, and partly found floating on the sea, and landed, were conveyed to the warehouse of the lord of the manor, and immediately claimed by the owner. It was held, that they were chargeable with duty as "wreck," brought or coming into the United Kingdom," within the statute 3 & 4 Will. 4, c. 52, s. 50 (a). (*Barry v. Arnaud*, 10 *A. & E.* 646.) Meaning of term in the acts as to customs.

By the 17 Edw. 2, st. 1, c. 11, the king shall have wreck of the sea throughout the realm (b).

(a) The 6 & 7 Will. 4, c. 60, s. 3, however, repeals so much of the above act, as provides that wrecked goods, not worth the duty, shall be deemed unenumerated goods. And by the 5

& 6 Vict. c. 47, s. 17, no abatement of duties payable upon certain goods derelict, &c., shall be made or allowed on account of damage, &c.

(b) This revenue of wrecks is fre-

1. *Wreck, what, and who entitled to.* The cause whereof originally wreck was given to the crown, stood upon two main maxims of the common law.

To whom the wreck belongeth. Grantee of wreck has a special property.

1st. That the property of all goods whatsoever must be in some person. 2ndly. That such goods as no subject can claim any property in, do belong to the king by his prerogative. (2 *Inst.* 167.)

The grantee of wreck has a special property in all goods stranded within his liberty, and may maintain trespass against a wrong doer for taking them away, though such goods were part of a cargo of a ship from which some person escaped alive to land, and though the owners within a year and a day claimed and identified them, and though the taking was before any seizure on behalf of the grantee. (*Dunwich (Bailiffs, &c.) v. Sterry*, 1 *B. & Ad.* 831.)

Evidence of presumptive right.

Parol evidence cannot be resorted to in order to support a prescriptive right to wreck, if it appear that the property in respect of which wreck is claimed, was in the crown in the time of Charles the First, as a jury could not infer that it was in those under whom the party claims from time of legal memory. (*Alcock v. Cooke*, 2 *M. & P.* 625.)

Two allowances in eyre, and a judgment in trespass 400 years since, are not conclusive evidence against an usage for ninety-two years last past to have the wreck of the sea. (*Biddulph v. Ather*, 2 *Wils.* 23.)

## II. Salvage in Cinque Ports.

1 & 2 Geo. 4, c. 76.

Lord Warden to appoint commissioners to determine differences relative to salvage.

By 1 & 2 Geo. 4, c. 76, which is still in force only for sects. 1, 2, 3, 4, 5, 15, 16, 18, it is enacted, That it shall and may be lawful for the lord warden of the cinque ports, for the time being, to nominate and appoint, by any instrument or instruments under his hand and seal, three or more substantial persons in each of the cinque ports, two ancient towns and their members, to adjust and determine any difference relative to salvage (which may arise) between the master of any vessel and the person or persons bringing such cables and anchors ashore; and in case any ship or vessel shall be either forced or cut from her cables and anchors, by extremity of weather, or by any other accident whatever, and leave the same in any roadstead, or other place within the jurisdiction of the cinque ports, two ancient towns and their members, and the salvage cannot be adjusted between the persons concerned, then the same shall be determined by any three or more of the said persons so to be appointed as aforesaid, within the space of twenty-four hours after such difference shall be referred to them for their determination thereof, any usage or custom to the contrary in anywise notwithstanding: Provided always, that such commissioners shall, immediately after their nomination, proceed to elect some fit and proper person, who shall be a notary or master extraordinary in chancery, as their secretary or register\* except to the port of Dover, where the register\* for the time being of the court of admiralty of the cinque ports shall be the register;\* and which secretary, or register\* shall enter in a book, to be kept for that purpose, all the proceedings of such commissioners, and also a copy of the awards which they shall from time to time make; but such election of secretaries, or registers,\* shall be subject to the approbation of the lord warden for the time being.

Who are to appoint a secretary, subject to approbation of lord warden.

Proceedings entered.

\* *Sic.*

Power to commissioners to settle all differences which may arise

Sett. 2. It shall be lawful for the said commissioners, to be appointed as aforesaid, to decide on all claims and demands whatever

quently granted out to lords of manors, as a royal franchise; and if any one be thus entitled to wrecks in his own land, and the king's goods are wrecked

thereon, the king may claim them at any time, even after the year and day. (1 *Bla. Com.* 292.)

which shall or may be made by pilots, hovellers, boatmen, and other persons for services of any sort or description rendered to any ship or vessel, as well for carrying off from the shore to such ship or vessel, any anchors, cables or other stores from any part or port of the coast of Kent, Sussex, Essex, or the Isle of Thanet, within the jurisdiction aforesaid, as for the conducting and conveying such ships and vessels from the Downs, and other bays and roadsteads on the coast of Kent, Sussex, and Essex, and the Island of Thanet, or from the sea or any other place, to Ramsgate, Dover, or any other harbour, port, or place, on the said coasts, within the jurisdiction aforesaid, or for the saving and preserving, within the jurisdiction aforesaid, any goods or merchandize wrecked, stranded, or cast away from any ship or vessel, the master or owners thereof, or their agents, being present at the place where the commissioners shall be sitting; and that the said commissioners shall have full power and authority to hear and determine on all cases whatever of services rendered by pilots, boatmen, and others, to shipping within the jurisdiction aforesaid, whether such ships or vessels shall be in distress or not; and that it shall be lawful for the said commissioners, whenever they see occasion, to examine the parties or their witnesses upon their oath, which oath shall and may be administered by the said secretary or register.\*

Sect. 3. It shall be lawful for the commissioners so to be appointed, and their secretary or register\* as aforesaid, who shall decide on any such claims or demands as aforesaid, to demand and receive of and from the owners of such ships or vessels, or the proprietors of any such goods or merchandizes, against whom any pilot, boatman, or other person, shall make any claim or demand for services of any sort rendered to such ships or vessels, or for the sole saving and preserving any goods or merchandizes wrecked, stranded, or cast away, within the jurisdiction aforesaid: and such owners and proprietors are hereby required to pay to them such fee or reward for deciding on every such claim and demand, as shall be adjudged to them in that behalf by the lord warden of the cinque ports for the time being: Provided always, that no person to be appointed a commissioner by virtue of this act shall have power or authority to act in any other port or place than that in which he is resident, or from which his usual place of residence is not distant more than one mile; and that before such commissioners shall in any case proceed to act, they shall severally take the following oath before a magistrate or a commissioner of the court of King's Bench or Common Pleas, or a master extraordinary in chancery—(*videlicet*):

*"I, A. B. do swear, that I have not, neither will I, in any way, directly or indirectly, take or receive any fee, emolument, or reward from any of the parties whose interests are referred to my decision (save and except such fee or reward as shall be allowed by the lord warden to be paid to me by the ship-owners or proprietors of the cargo, or their agents): and that I will not accept or receive any fee whatever from the persons claiming reward or salvage; but that I will decide according to the best of my judgment, on the evidence to be brought before me, without favour or affection to either party."*

*"So help me God."*

Sect. 4. In case the party or parties so claiming to be entitled to salvage or compensation for services rendered as aforesaid, or the party or parties who are to pay the same, or their agents, shall be dissatisfied with such award and decision of the commissioners, it shall and may be lawful for either of them respectively, within eight days after such award is made, but not afterwards, to declare to the commissioners his or their desire of obtaining the judgment of some competent court of admiralty respecting the said salvage or compensation as aforesaid; and thereupon such party or parties shall forthwith be

## 2. *Salvage in Cinque Ports.*

1 & 2 Geo. 4. c. 76.  
within the limits  
herein mentioned.

\* *Sic.*

Commissioners  
and secretary to  
be paid by owners,  
&c.

\* *Sic.*

Fees as allowed  
by the lord warden.

No commissioner  
to act out of place  
of residence.

Commissioners to  
take oath.

Appeal to Admiralty, or Admiralty of the Cinque Ports; but ship to be liberated, on bail in double amount of award.

*2. Salvage in  
Cinque Ports.*

& 2 Geo. 4, v. 76.

Bail to be taken  
and certified ac-  
cording to sche-  
dule annexed.

\* *Sic.*

Appeal conclu-  
sive.

Lord warden and  
his deputies,  
judge official, &c.,  
to have like power  
as justices of  
peace or commis-  
sioners under this  
act.

Manner of issuing  
commissions for  
the punishment  
of offences,  
28 Hen. 8, c. 15,  
ss. 5, 6.

required by the commissioners to declare whether he or they will proceed in the court of admiralty of the cinque ports, or the high court of admiralty of England, and he or they shall so proceed within twenty days from the date of such award, by taking out a monition against the adverse party; but in such case the said commissioners are hereby empowered and required to permit the said ship and her cargo, notwithstanding such declaration and proceeding, to depart on her voyage, or to deliver to the owners and proprietors, or their agents, any goods or merchandizes respecting which any claim for salvage shall be made upon the owners or proprietors of the same, or their agents, giving good and sufficient bail in double the amount of the sum awarded; and which bail the said commissioners, or any of them, are and is hereby authorised to take and certify according to the form contained in the schedule hereunto annexed, and to transmit the same without delay to the court of admiralty, in which the intention of proceeding shall be so declared, together with a true certificate in writing of the gross value of the whole ship and cargo, or other goods and merchandizes respecting which salvage shall be claimed, and also an official copy of such proceedings and awards, certified by the said secretary or register,\* and the same shall be admitted by such court of admiralty as evidence in the cause.

Sect. 5. Provided, that on an appeal so as aforesaid being made to the court of admiralty of the cinque ports, or to the high court of admiralty, the same shall be taken and held to be final, and no ulterior appeal from sentence of the court of admiralty of the cinque ports, or from the high court of admiralty, shall lie to the king in chancery.

Sect. 15. The lord warden of the cinque ports for the time being, and the lieutenant of Dover castle for the time being, and the deputy wardens of the cinque ports for the time being, and the judge official and commissary of the court of admiralty of the cinque ports, two ancient towns, and the members thereof for the time being, and any other officer who shall be specially appointed by the lord warden, and all and every of them, shall and may execute, perform, and do, within the jurisdiction aforesaid, all the acts, matters, and things contained in this act, in like manner, to all intents and purposes, as any magistrate or magistrates, or any commissioner or commissioners to be appointed by virtue of this act, is and are authorised to execute, perform, and do the same.

Sect. 16. And whereas, by 28 Hen. 8, intituled "For Pirates," it is among other things enacted, that whenever any commission for the punishment of certain offences therein named, shall be directed or sent to any place within the jurisdiction of the five ports, that then every such commission shall be directed unto the lord warden of the said port for the time being, or to his deputy, or unto three or four such persons as the lord chancellor for the time being shall name and appoint; and whereas by the said act it is further enacted, that every inquisition and trial to be had by virtue of such commission shall be made and had by the inhabitants of the said five ports, or the members of the same; and whereas of a long time passed no such commission has been sent to any place within the jurisdiction of the cinque ports: be it enacted, for the more certain and speedy administration of justice, that as often as his Majesty shall direct a commission, according to the provisions of the aforesaid act, to the admiral or admirals, or his or their lieutenant deputy and deputies, it shall and may be lawful for his Majesty, on the application of the lord warden of the cinque ports, to direct such commission jointly to the admiral or admirals, or his or their lieutenant deputy and deputies, and also to the lord warden of the cinque ports for the time being, and to his deputy; and the commissioners who shall sit by virtue of such commission, so jointly addressed, to whatever shire or place in the realm

the same shall be limited, shall have full power and authority to inquire into, try, and determine all offences named in the said act, or in any other act relating to proceedings under such commission, by the oaths of twelve good and lawful inhabitants in the shire limited in the said commission, whether the said offences shall have been committed within the jurisdiction of the lord high admiral of England, or of the lord warden of the cinque ports; and all and every trial, conviction, judgment, and proceeding whatsoever under such commission, shall be as good and effectual to all intents and purposes in law, and shall be followed by the same consequences to the offender or offenders, as if the same were had by virtue of any separate commission to be issued under the provisions of the aforesaid act of king Henry 8: Provided always, and it is hereby further declared, that this act, or anything herein contained, shall not extend, or be construed to extend, to the taking away, abridging, prejudicing, or impeaching, in any manner whatever, the jurisdiction of the high court of admiralty of England, or the jurisdiction of the admiralty court of the cinque ports, two ancient towns and their members; but that it shall and may be lawful for the said courts respectively, and the judge or judges thereof for the time being, to have, use, exercise, and enjoy jurisdiction over all such matters, rights, and offences, as they have heretofore had, used, exercised, and enjoyed, as fully and effectually, to all intents and purposes whatever, as if this act had not been made; anything hereinbefore contained to the contrary in anywise notwithstanding.

Sect. 18. And whereas doubts have arisen as to the exact boundaries of the jurisdiction of the lord high admiral and the lord warden of the cinque ports, and it is highly expedient for the purposes of this act that the same should be clearly set forth: now it is hereby declared and enacted, That the boundaries of the jurisdiction of the lord warden of the cinque ports, in regard to any matter or thing contained in this act, shall be and shall be deemed and taken to be as follows, (that is to say:) from a point to the westward of Seaford, in the county of Sussex, called Red Cliff, including the same: thence passing in a line one mile without the sand or shoal called the Horse of Willingdon, and continuing the same distance without the ridge and new shoals; and thence in a line within five miles of Cape Grisnez, on the coast of France; thence round the shoal called the Overfalls, two miles distant from the same; thence in a line without, and the same distance along the eastern side of the Galloper Sand, until the north end thereof bears west north west, true bearing, from the west north west bearing of the Galloper, it runs in a direct line across the shoal called the Thwart Middle, till it reaches the shore underneath the Maze Tower; from thence following in a line of the shore up to Saint Orsyth, in the county of Essex, and following the course of the shore up to the river Coln, to the landing-place nearest Brightlingsea; from thence in a direct line to Shoe Bacon; from thence to the point of Shellness, on the Isle of Shippey; and from thence across the waters to Feversham; and from thence following the line of coast round the North and South Forelands, and Beachy Head, till it reaches the said Red Cliff, including all the waters, creeks, and havens comprehended between them: Provided always, and it is hereby declared, that nothing in this act contained shall extend, or be construed to extend, to enlarge or abridge the local limits of the ancient jurisdiction, rights, and privileges of the lord high admiral of England or the lord warden or admiral of the cinque ports respectively, or their respective representatives; but that the same shall remain according to ancient usage, and that the description hereinbefore contained shall only be deemed applicable to the purposes of this act; anything herein contained to the contrary notwithstanding.

2. *Salvage in Cinque Ports.*

1 & 2 Geo. 4, c. 76.

Proviso for rights of Admiralty Court, and of Admiralty of Cinque Ports.

Boundaries of jurisdiction of lord warden of Cinque Ports.



2. *Salvage in  
Cinque Ports.*

SCHEDULE to which this Act refers.

1 & 2 Geo. 4, c. 76.

Schedule.

"On the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, before &c.,  
\_\_\_\_\_, at \_\_\_\_\_, in the county of \_\_\_\_\_.

[Ships' Names.]

[Masters' Names.]

"A. B., [here insert the name of the salvors] against the said ship, whereof \_\_\_\_\_ was master, her tackle, apparel, and furniture, and the goods, wares, and merchandizes on board the same; and also against the said \_\_\_\_\_, master, and the owners of the said ship and cargo [or as the case may be, "against certain goods and merchandizes lately laden on board the said ship, whereof \_\_\_\_\_ was master, and also against the said \_\_\_\_\_, master, and the owners" (or if the owners alone appear by themselves or agents, then leave out the master's name) "of the said goods and merchandizes"] in a cause of salvage.

"On which day appeared personally W. X., of \_\_\_\_\_, and Y. Z., of \_\_\_\_\_, who produced themselves as sureties for the said \_\_\_\_\_, the master, and for the owners of the said ship and cargo [or as the case may be], for the said \_\_\_\_\_, master and owners of the said goods and merchandizes; and submitting themselves to the jurisdiction of the High Court of Admiralty of England [or, the Court of Admiralty for the Cinque Ports," as the case may be], bound themselves, their heirs, executors, and administrators, for the said master and owners of the said ship and cargo [or as the case may be, "for the said \_\_\_\_\_, master and owners," [or "for the owners of the said goods and merchandizes"], in the sum of \_\_\_\_\_ pounds of lawful money of Great Britain, unto the said A. B., &c., to answer the salvage and expenses of the said ship and cargo [or as the case may be, "on the said goods and merchandize,"] as shall hereafter be decreed by the said court, according to the tenor of the act in that behalf made and provided; and unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, wheresoever the same shall be found, to the value of the sum above mentioned.

"This bail was duly taken, acknowledged, and received at the time and place above written, before me, the undersigned commissioner; and I do hereby further certify, that I do believe and consider the persons above-mentioned sufficient security for the sum of \_\_\_\_\_ pounds.

W. X. }

Y. Z."

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